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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1945

No. 87

A. R. TUCKER APPELLANT,

vs.

THE STATE OF TEXAS

APPEAL FROM THE COUNTY COURT OF MEDINA COUNTY, STATE OF TEXAS

FILED MAY 24, 1945.

SUPREME COURT OF THE UNITED STATES

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IN JUSTICE COURT, PRECINCT NO. ONE, MEDINA COUNTY, TEXAS

No. 4566

COMPLAINT—Filed October 10, 1944

In the Name and by the Authority of the State of Texas:

Before Me, the undersigned authority, on this day personally appeared A. B. Purinton who, after being by me duly sworn, on oath deposes and says (that he has good reason to believe and does believe and charge) that one A. R. Tucker on (or about) the 5th day of October A. D. 1944, and before the making and filing of this complaint, in Medina County, State of Texas, did then and there enter upon premises owned by A. B. Purinton, and was then and there a peddler and hawker of goods and merchandise, and did then and there unlawfully and wilfully refuse to leave said premises after having been notified by the said A. B. Purinton, the owner of same, contrary to the forms of the Statute in such cases made and provided and against the peace and dignity of the State.

(Signed) A. B. Purinton.

Sworn to and subscribed before me this 10th day of October, A. D. 1944.

(Signed) Frank X. Vance, County Attorney, Medina County, Texas.

[File endorsement omitted.]

[fol. 4] IN THE COUNTY COURT OF MEDINA COUNTY, TEXAS

No. 1679

THE STATE OF TEXAS

vs.

A. R. TUCKER

JUDGMENT—January 29, 1945

On this the 29th day of January, 1945, this cause was called for trial, and came to the State by her attorney, and

came the Defendant in person and by attorney, and all parties announced ready for trial; the defendant, A. R. Tucker, pleaded not guilty to the complaint and waived a trial by jury, and submitted the decision of the cause to the Court. And the Court having heard the complaint read, and the defendant's plea of not guilty thereto, and having heard the evidence and argument of counsel, finds from the evidence that the defendant is guilty as charged in the complaint and assesses his punishment at a fine of One Dollar and costs of court.

It is therefore considered, ordered, and adjudged by the Court that the State of Texas do have and recover of the defendant, A. R. Tucker, the said fine of One Dollar and all costs of this prosecution, and orders the said defendant committed to the custody of the sheriff, who will commit him forthwith to jail in Medina County until such fine and costs are paid. And execution may issue against the property of the said defendant for the amount of such fine and costs.

(Signed) Arthur H. Rothe, Judge.

[fol. 5] IN THE COUNTY COURT OF MEDINA COUNTY

[Title omitted]

MOTION TO DISMISS

Now comes the defendant and moves the court to dismiss this cause and for discharge upon the following grounds:

1. The complaint is invalid and does not state facts sufficient to constitute an offense under the law.

2. It appears from the evidence that this court is without jurisdiction to try the case, in that the complaining witness is not the owner of property alleged by the complaint from which the defendant refused to leave, but that said premises is owned, managed and controlled by the United States Government over which exclusive jurisdiction is retained by the federal court and federal government and not the state court or state government.

3. The law in question, as construed and applied to the particular facts and circumstances shown in the evidence in this case, is invalid and void, because it abridges the right

of freedom of speech, press and worship of Almighty God, contrary to the First and Fourteenth Amendments to the United States Constitution, as well as the similar provision in the Constitution of this State.

4. The prosecution has wholly failed to make out a case against the defendant and the evidence shows that the defendant is not guilty of the offense charged.

Wherefore the defendant prays that the court dismiss the case and that the defendant be discharged.

Tom S. Williams, Attorney for Defendant.

Motion refused.

Arthur H. Rothe, Judge.

[fol. 6] In the County Court of Medina County

[Title omitted]

Defendant's Second Motion to Dismiss

Now comes the defendant at the close of all the evidence and moves the court to dismiss the complaint and for a finding of "not guilty" upon the following grounds:

1. It appears from the evidence that this court is without jurisdiction to hear this case, in that the undisputed evidence shows that the complaining witness is not the owner of the premises as alleged in the complaint and from which it was alleged the defendant refused to leave; but the undisputed evidence shows that the premises are owned, managed and controlled by the United States Government over which exclusive jurisdiction is retained by said United States Government; that said prosecution as it now appears from the undisputed evidence is for the violation of a "Federal Regulation" over which the State of Texas has no jurisdiction, and not for the violation of any state statute of which this court has jurisdiction.

2. The undisputed evidence shows that the defendant is not guilty as charged in the complaint.

3. The undisputed evidence shows that defendant is an ordained minister of Jehovah God, preaching the gospel of God's kingdom by distributing literature containing Bible

sermons, and therefore the statute as properly construed does not apply to the activity of defendant.'

4. If the statute in question is construed and applied to cover the defendant's activity, then it unlawfully abridges and denies defendant's right of worship, speech and press, contrary to the First and Fourteenth Amendments to the United States Constitution.

[fols. 7-10] 5. If the statute is construed and applied to cover the defendants activity, then it unlawfully abridges and denies the defendant's right of freedom of conscience, freedom to worship Almighty God, freedom of speech and press, contrary to the Constitution of the State of Texas.

Wherefore the defendant prays the court that this court enter a judgment discharging the defendant upon a finding of not guilty.

Tom S. Williams, Attorney for Defendant.

Motion Refused.

Arthur A. Rothe, Judge.

[fol. 11] In County Court of Medina County

[Title omitted]

Defendant's First Amended Motion for a New Trial

Now comes the defendant A. R. Tucker in the above entitled and numbered cause and with leave of the court first had and obtained and files this his first amended motion for a new trial in lieu of his original motion for new trial filed herein, and moves the court to set aside the verdict and judgment herein rendered against him on the 29th day of January, A. D. 1945, and grant him a new trial for the following reasons, to wit:

1. The judgment of the court is contrary to the evidence.

2. The judgment of the court is contrary to the law.

3. The court committed error in overruling defendants first motion for judgment and dismissal filed at the close of the states main testimony.

4. The court committed error in overruling defendant's second motion for judgment and dismissal filed at the close of all the evidence of the state and defendant.

A. R. Tucker, Defendant, by Tom S. Williams, Attorney for Defendant.

[fol. 12] In County Court of Medina County

[Title omitted]

Order Overruling Defendant's Motion for a New Trial

On this the 5th day of March, A. D. 1945, in the above entitled and numbered cause, came on to be heard and considered defendant's first amended motion for a new trial; and came the defendant by his attorney of record and the State of Texas by its county attorney; and the court having read said motion, and having heard argument of counsel thereon, and duly considering same, is of the opinion that said motion for new trial should be in ail things overruled, and it is so Ordered, Adjudged, and Decreed by the court, to which action of the court the defendant in open court duly excepted.

Arthur H. Rothe, Judge.

[fol. 13] In Justice Court, Precinct No. One, Medina County, Texas

No. 4566

The State of Texas

vs.

A. R. Tucker

Frank X. Vance, State's Attorney.
Tom S. Williams, Defendant's Attorney.

Transcript of Judgment

Complaint Filed the 10th day of October, 1944.

Made by A. B. Purinton Against A. R. Tucker

Charged with enter upon premises owned by A. B. Purinton and merchandise and did then and there unlawfully and and was then and there a peddler and hawker of goods

wilfully refuse to leave said premises after being notified to do so by said A. B. Purinton. Warrant issued the 10th day of October, 1944.

Placed in the hands of Sheriff Jack M. Fusselman. Executed 10th day of October, 1944

This 10th day of October, A. D. 1944, in open Court this cause was called for trial, and both parties appeared and announced ready for trial, and the defendant waived a jury; thereupon the Complaint was read to the defendant, and he pleaded not guilty to the accusation therein contained; and the Court having heard the evidence, it is considered and adjudged by the Court that said defendant A. R. Tucker is guilty of the offense of —— —— and assesses his punishment therefor at a fine of One Dollar.

It is therefore ordered and adjudged by the Court that the State of Texas do have and recover of the defendant A. R. Tucker the sum of One Dollar Fine, and all the costs of this prosecution, and that the defendant remain in custody of the Sheriff of Medina County, Texas, until said fine and costs are fully paid; and further, that Capias Pro Fine and Execution issue to collect the same.

[fols. 14-17] Witness my official signature this 10th day of October, 1944.

(Signed) H. V. Haass J. P.

Justice's Certificate to foregoing transcript omitted in printing.

[fol. 18] [File endorsement omitted.]

[fol. 19] In the County Court of Medina County, Texas

No. 1679

The State of Texas

vs.

A. R. Tucker

Statement of Evidence—Filed April 17, 1945

Be It Remembered, that heretofore, to-wit, on the 29th day of January, A. D. 1945, the same being one of the days of said term of said court, the above numbered and entitled

cause came on for trial before the Hon. Arthur H. Rothe, Judge of said Court.

Frank X. Vance, Esq., County Attorney, Attorney for the Plaintiff, State of Texas; Tom Williams, Esq., Attorney for the Defendant.

Whereupon, the following evidence was introduced and proceedings had, to-wit:

[fol. 20] A. B. PURINTON, a witness for the State, was first duly sworn and testified as follows:

Direct examination.

Questions by Mr. Vance:

Q. Your name is A. B. Purinton?

A. Yes, sir.

Q. That is spelled P-u-r-i-n-t-o-n?

A. Yes, sir.

Q. What is your job, Mr. Purinton?

A. I am the housing manager of the Hondo Navigation Village.

Q. Now, in reference to your duties out there on this job, would you briefly tell the court just what those duties cover in reference to the village?

A. Well, my duties are to rent the various housing units, and to supervise work that is done out there, and to see that the rules and regulations of the U. S. Government in connection with the project are carried out and enforced.

Q. What are some of those rules and regulations? Do you have any in reference to peddlers and hawkers?

A. We have a regulation there that soliciting, peddling and hawking of any kind is not allowed without permission of the manager.

Q. Without permission of the manager. Do you know Mr. Tucker here, the defendant?

A. Yes, sir.

Q. Did you ever have occasion to see him on or about the 5th of October, 1944?

A. Yes, sir.

[fol. 21] Q. Where did you see him?

A. In the Hondo Navigation Village.

Q. And what was he doing out there?

A. Just to get this date straight may I ask if the night before was the 5th?

Q. In reference to on or about that date.

A. He came to my house the evening—I think the evening of the 4th, or on or about that date, and sold me a pamphlet.

Q. A religious pamphlet?

A. Yes, sir, published by the Watchtower organization of Jehovah's witnesses—connected with them.

Q. Had you had a conversation with him previous to that out there at the Village?

A. On several occasions.

Q. What was the nature of those conversations?

A. The first time he was in the Village going from house to house I sent for him to come over to the office and I informed him that we did not allow that and that he would have to quit.

Q. Wuit?

A. Soliciting and doing whatever he was doing, bothering the people.

Q. As far as the village is concerned?

A. Yes.

Q. You are in full charge of the Village as far as the management of the Village proper is concerned?

A. I am in entire charge.

Q. Collecting the rent and renting the property, is that right?

A. Yes, sir.

[fol. 22] Q. Now, I believe you stated he was to leave?

A. Yes.

Q. Did he leave?

A. I believe that in this case he did leave, but he came back and continued his work, and two or three other times I gave him orders to leave and he refused to do so.

Q. He refused to do so?

A. In one or two cases he refused to leave the project; he went on to other houses after I told him.

Q. Do you know Mr. Williams, D. C. Williams?

A. Yes, sir.

Q. Did you have any conversation with Mr. Williams in the presence of Mr. Tucker?

A. I did.

Q. What was the nature of that?

A. I told him that he would have to leave; I told him before he was not allowed to solicit or peddle on that project and he refused to leave.

Q. Would you advise the court, or tell the court, just why you have such a regulation out there, about peddling and soliciting?

Mr. Williams: We object to that as being immaterial. Why they have it is sufficient, if they do have it. If they have it its under legal valid regulations of the United States Government and does not concern this court nor the witness or the defendant either why the Federal Government might have a regulation of that kind. The regulation would have to speak for itself; he can't explain it.

[fol. 23] The Court: Sustain the objection.

Q. Now, what do the residents of the Village—what are their occupations?

A. One member of each family is required to work at the air field or some organization in town which has something to do with war work.

Q. They all work at the same shifts or hours?

A. No, they do not. Some work at day and some work at night.

Q. Do some sleep there during the daytime and some sleep at night?

A. They do at various times.

Mr. Vance: Your witness.

Cross-examination.

Questions by Mr. Williams:

Q. Now, Mr. Purinton, how long have you lived here in Hondo?

A. Since the middle of June of last year.

Q. Have you been connected with the Hondo Navigation Village since you moved to Hondo?

A. Yes.

Q. And this Hondo Navigation Village belongs to the Federal Housing Commission, is that right?

A. It is operated by the Federal Public Housing Authority, which is a branch of the National Housing Agency.

Q. Where did you come from?

A. Fort Worth, Texas.

Q. Were you connected with the Federal Housing Agency in Fort Worth?

A. No, I was not.

Q. You never worked for them before?

[fol. 24] A. No, sir.

Q. This is your first job with them?

A. My first job with the Federal Public Housing Authority. I have worked for other agencies under the same agency.

Q. Now, this Village that you have under your control out here belongs to the U. S. Government?

A. Yes, sir.

Q. Any regulation that is in force out there is a Federal regulation, is it not?

A. Not necessarily, some regulations are not.

Q. Well now, this regulation that you just told the State's attorney about was a Federal regulation, wasn't it?

A. It is.

Q. That no peddlers or hawkers can trade, could not come into this Village without first getting permission from the manager?

A. Yes.

Q. And it was for the enforcement of this regulation that you called upon the county authorities of Medina County to carry out, was it not?

A. Yes.

Q. Why didn't you call in a United States Marshal?

A. Well, there was none here.

Q. There were none in Texas?

A. Well, I understand there are some in Texas.

Q. Did you make a complaint to the Federal Government for the violation of this regulation?

A. No, it was not necessary.

[fol. 25] Q. You own this Navigation Village?

A. The government owns the land.

Q. Well, do you own it?

A. I do not own it except as an agent of the government.

Q. Then, what you have signed here and swore to is not true. You allege in the complaint that you are the owner of this property?

A. As the agent of the government.

Q. You don't say anything about as the agent of the government?

A. Technically, I am.

Mr. Williams: I will read the complaint to you, it is as follows: In Justice Court, Precinct No. One, Medina County,

No. 4566, in the name and by the authority of the State of Texas:

Before me, the undersigned authority, on this day personally appeared A. B. Purinton who, after being by me duly sworn, on oath deposes and says (that he has good reason to believe and does believe and charge) that one A. R. Tucker on (or about) the 5th day of October A. D. 1944, and before the making and filing of this complaint, in Medina County, State of Texas, did then and there enter upon premises owned by A. B. Purinton, and was then and there a peddler and hawker of goods and merchandise, and did then and there unlawfully and wilfully refuse to leave said premises after having been notified by the said A. B. Purinton, the owner of same, contrary to the forms of the Statute in such cases made and provided and against the peace and dignity of the State.

A. B. Purinton.

[fol. 26] Sworn to and Subscribed before me this 10th day of October, A. D. 1944, Frank X. Vance, County Attorney, Medina County, Texas.

No. 4566 Complaint The State of Texas vs. A. R. Tucker. Filed 10 day of October 1944, H. V. Haass, Justice of the Peace, Prec. No. One, Medina Co.

Q. You claim now to be the owner of that property?

Mr. Vance: If you understand the statute the proper way to allege this type of complaint is if a man is a special owner that he is in authority and you wouldn't have to know who is the fee title owner of the land. Whoever is in charge.

Mr. Williams: The point I want to make here is that this property belongs to the Federal Government and that this court, a state court, has no jurisdiction over it and that if the defendant here has violated any valid law or regulation it is a violation of a Federal law or regulation and not a state law. The complaining witness has alleged here that he is the owner of this property. Now, for the first time we have an opportunity in this court to bring out that he doesn't own the property; that he is attempting to enforce in a state court a federal law, which cannot be done. And it is for that purpose that I am soliciting these answers from the complaining witness, and now it is evident that he doesn't own this property and evident that if there is any regulation that he is attempting to enforce, it is a Federal

regulation, and can only be enforced in a Federal court. We move the court to dismiss this complaint; because the, [fol. 27] court does not have jurisdiction to proceed further. The jurisdiction properly belongs in the Federal court and not in the state court.

Mr. Vance: If your Honor please, it would be the same as saying if I had a house rented out there on government property and a man came in there and attempted to take any of my property, or enter my house, I would have to take it up with the Federal Government rather than with the local state authorities; or, if a murder was committed, it would have to be taken care of by the Federal Government and not the local state authorities. Because it was government property the State of Texas couldn't handle it.

Mr. Williams: That is exactly my position, your Honor, and that is the law, but now this case is foreign from that. There has been no murder, no burglary, and this man on the stand here, the complaining witness, doesn't have that property rented out there, he is merely an agent of the United States Government. Navigation Village belongs to the United States Government. If there is a valid law or regulation that prohibits an individual from going out into Navigation Village and doing the things that the proof shows the defendant did it would have to be a Federal law and it must be enforced in a Federal court and it is a matter for this court to determine. We could have demurred to this complaint had the true facts been set out in it. We now move the court to dismiss for want of jurisdiction.

The Court: Motion overruled.

Mr. Williams: Note our exception.

[fol. 28] Q. All right, now, Mr. Purinton, you say you have regulations out there that prohibit peddlers?

A. Yes.

Q. That they can come in with your permission?

A. Yes.

Q. Who makes those regulations?

A. The general regulations are made ~~in this case out of~~ Washington.

Q. Now, do you have a regulation that prohibits ministers of the gospel from going out there?

A. The regulation doesn't specify certain people; doesn't say which ones to prohibit.

Q. Well, I will ask you does the regulation prohibit the carrying on of preaching out in the Village by any denomination?

A. We have a rule which is carried out I think in all of the projects. We have a rule that the churches can go in together, each denomination, and have an inter-denominational Sunday School. They are not allowed to have denominations of their own meeting because there are so many of them they can't be taken care of there.

Q. You wouldn't permit a Baptist to go out there and conduct a service?

A. Not without a special permit.

Q. Who would he have to get it from?

A. From me.

Q. Would a Methodist have to get permission from you?

A. That is right.

Q. It is in your power to grant or refuse permission?

[fol. 29] A. It is.

Q. You of course know this man here is a minister, do you not?

A. I understand he is.

Q. That this method that he has of going from house to house offering literature is his way of preaching the gospel, you know that?

A. Yes, I believe he did, I understand that.

Q. Your regulations only apply to peddlers and hawkers of merchandise, does it not?

A. Solicitors, including that.

Q. Now, when was the first time you saw this defendant?

A. It was—it must have been a month before this case finally came to a head.

Q. Was he, the defendant, at the Navigation Village when you met him?

A. Yes.

Q. Did you have a conversation with him at that time?

A. Yes.

Q. What was he doing out there?

A. He was going from door to door.

Q. Was he knocking on the doors?

A. I think so; I didn't hear him knock.

Q. Was that all he was doing; did you stop him?

A. I sent one of my men to tell him to come over to the office, and I told him to stop.

Q. Was he going to your door or somebody else's?

A. He did come to my door.

Q. Were you there?

[fol. 30] A. I wasn't.

Q. Was that the first time or some other time?

A. That was the first time.

Q. That was not the first time he was out there?

A. No, it wasn't.

Q. Well, did he come over to your office when you requested him to do so?

A. He did.

Q. Did you have a conversation with him?

A. Yes.

Q. Did he tell you what he was doing?

A. Yes.

Q. What did you tell him?

A. I told him we couldn't allow it.

Q. What did he tell you he was doing?

A. He told me he was preaching the gospel, putting the facts before the people in their homes.

Q. Do you say now that he wasn't preaching the gospel when you sent for him?

A. No, I wouldn't say that.

Q. And you told him you didn't allow that out there?

A. Yes.

Q. If you saw fit you could have allowed it, couldn't you? It was in your power?

A. I could have.

Q. Your individual feelings in the matter prevented you from permitting him to go along?

A. My feelings were that I did not want the members [fol. 31] in the Village disturbed. A lot of them sleep in the day time and told me that they did not want this Jehovah's witness or anybody coming to their door disturbing them when they were trying to sleep.

Q. Now, when was the next time you saw him?

A. Well, it was a day or two later, I don't know just how long.

Q. Where was he then?

A. Back out in the Village.

Q. Did he come to your house at that time?

A. No, he did not.

Q. Did you call him to your office then?

A. No, I believe that is the time I understood he was on another street away from the office. I was in a government

pickup and went around over there and told him on the street that he would have to stop soliciting and peddling.

Q. He didn't go to your house that day at all?

A. No.

Q. You have a home out there, do you not?

A. Yes.

Q. And he was calling at other peoples' homes that you had rented to?

A. Yes.

Q. Well, did he quit?

A. No, that day he did not.

Q. Then, when did you see him again; was he out there again after that?

A. Yes.

Q. Did he call at your home that time?

[fol. 32] A. I think that is the time he called at my home.

Q. Were you at home?

A. I was.

Q. What did he tell you?

A. Well, when I came to the door he seemed surprised that he came to my house, and he said, "I believe I talked to you in your office." I stated, "Yes, you know you did and I informed you at that time you couldn't solicit out here," and he started talking to me and I asked him if he had any literature or anything to sell, I said, "What do you have here to sell," and he said he had a pamphlet to sell, that it was a nickel, and I bought it.

Q. Do you know what if was?

A. I can't recall except some literature of the Jehovah's witnesses.

Q. Did you keep it?

A. I did.

Q. Did you read it?

A. No.

Q. What did you buy it for?

A. For evidence.

Q. You bought it for evidence?

A. Evidence that he was peddling.

Q. What denomination do you belong to?

A. Presbyterian Church.

Q. Did you allow Presbyterian ministers to go out there and preach?

A. I have never yet allowed Presbyterian ministers go [fol. 33] out there and preach.

Q. And you say that the Federal Government has given you authority to say who can preach out there and who cannot?

A. Yes.

Q. Did they put that authority in writing?

A. It is included in the general instructions.

Q. Are the general instructions in writing?

A. Yes.

Q. Well, the general instructions say who you may designate to preach out there and what denominations cannot?

A. The general instructions say that soliciting, peddling and hawking——

Q. We are talking about preaching now——

A. And that the housing manager has the authority to make the rules and regulations governing the Village in any way.

Q. The Federal Government gives you full control over the lives of all the people out there, is that right?

A. Yes.

Q. You say that is correct?

A. Yes, in protection of lives and things like that.

Q. I mean over what they shall do or what they shall not do out there; whether they can have their denomination preach out there or not?

A. Yes.

Q. That is up to you?

A. That is up to me.

Q. And then you were enforcing the regulation you made out of the general regulations the government gave you?

[fol. 34] A. Yes.

Q. All of this took place out there on Federal property?

A. Yes.

Q. He left your property when you told him to, didn't he?

A. Yes.

Q. Then you are not complaining about him staying on your property when you told him to leave your house that you have rented out there; he left, didn't he?

A. Yes.

Q. Your complaint is about him being on somebody else's property, isn't it; the general property that somebody has rented and paying the Government rent for?

A. That is right.

Q. That is your complaint, isn't it?

A. Generally, also my complaint is he came to my house after I told him to keep out of the entire Village and then he came to my house.

Q. You told about him being surprised when he came to your house?

A. Yes.

Q. He didn't know it was your place, did he?

A. No.

Q. You stated you purchased a booklet from him, didn't you?

A. Yes.

Q. And then after you purchased the booklet you ordered him to leave?

A. Yes.

Q. And he did leave?

A. Yes.

[fol. 35] Q. Then, you are not complaining about him refusing to leave your property, I mean the property you are living in, your home?

A. I am complaining in connection with other things that after I told him to leave the Navigation Village he did not.

Q. He made a call on your home in connection with calls he was making on other houses out there, that was the way it was?

A. Yes.

Q. Do you know of any home he refused to leave out there after the tenant or occupant ordered him to leave?

A. I can't recall.

Re-direct examination.

Questions by Mr. Vance:

Q. Mr. Purinton, in what county is the Navigation Village?

A. Medina County, Texas.

Q. That is where this took place?

A. Yes.

Q. When Mr. Tucker left your house that night when he was at your home do you know if he left the premises of the Village or not, or do you know?

A. No, I do not.

Mr. Vance: That is all.

Mr. Williams: No further questions.

(Witness Excused.)

[fol. 36] D. C. WILLIAMS, a witness for the State, was first duly sworn and testified as follows:

Direct examination.

Questions by Mr. Vance:

Q. Your name is D. C. Williams?

A. Yes, sir.

Q. On or about October 5th, 1944, were you a deputy sheriff in Medina County?

A. Yes, sir.

Q. Did you have occasion to go out to the Village?

A. I beg your pardon?

Q. Did you have occasion to go out the Navigation Village on or about the 5th of October, 1944?

A. Yes, sir.

Q. And how come you to go out there?

A. I was called out there.

Q. By whom?

A. Mr. Purinton.

Q. Did you have occasion while out there to see Mr. Tucker?

A. Yes, sir.

Q. What was the nature of your visit out at the Village?

A. Well, I was called out there to—Mr. Tucker was out there and Mr. Purinton asked me to tell him to leave the property and not bother the people in the houses, some of which were sleeping in the day time, so I went and met Mr. Tucker and told him my name and who I was and that I had been told to ask him to leave the premises, and he told me that he would not leave because he had as much right out there as anybody else. I asked him if he had [fol. 37] a permit and he said no; so, that was just about all that was said at this time, just a few words you know and so the next time I went out there, the second trip, I had a warrant for him, for his arrest, so Mr. Purinton went with me and talked to Mr. Tucker and asked him if he was going to leave and he told me that he had as much right as anybody else and of course I served the warrant on him and brought him up and locked him up in jail.

Mr. Vance: Your witness.

Cross-examination.

Questions by Mr. Williams:

Q. Did he tell you what he was doing there, Mr. Williams?
A. No, not exactly.
Q. Did he tell you that he was a preacher?
A. I beg your pardon.
Q. Did he tell you that he was a preacher?
A. No, he didn't tell me that, he just told me that he had a right to go out there and call on these people and of course I didn't go in detail because after all the warrant was for his arrest and I served my warrant, which was my duty.

Mr. Williams: That is all, Mr. Williams.
Mr. Vance: The State rests.

Motion to Dismiss

Mr. Williams: The defendant offers this first written motion to dismiss, your Honor.
The Court: Motion overruled.
Mr. Williams: We ask that it be filed and note our exception.
Mr. Vance: We can consider it already filed.

[fol. 38] A. R. Tucker, the witness, was first duly sworn and testified in his own behalf as follows:

Direct examination.

Questions by Mr. Williams:

Q. Your name is Arthur Tucker?
A. Yes, sir.
Q. A. R. Tucker?
A. Yes, sir.
Q. You are the defendant in this case?
A. I am.
Q. Where were you born, Mr. Tucker?
A. State of Michigan.
Q. How long did you live in Michigan?
A. Approximately thirty-three years.
Q. How old are you now?
A. Thirty-seven.

Q. When did you leave Michigan?

A. 1943.

Q. When did you come to Texas?

A. In August of 1943.

Q. Whereabouts did you move to when you first came to Texas?

A. My first assignment was Pearsall.

Q. How long did you stay at Pearsall?

A. About three months.

Q. Where did you move to from Pearsall?

A. I came directly to Hondo, Texas.

Q. How long did you live in Hondo?

A. Nearly eight months.

[fol. 39] Q. Were you living in Hondo on or about the 5th day of October, 1944?

A. Yes, sir.

Q. Where do you now reside?

A. I live at Cuero, Texas.

Q. You moved from Hondo to Cuero?

A. Yes, sir.

Q. And you have lived in Cuero ever since?

A. I have, sir.

Q. What is your occupation?

A. I am an ordained minister of the gospel.

Q. How long have you been engaged in this occupation?

A. More than—slightly more than four years.

Q. What organization, if any, are you associated with in the pursuance of your ministerial duties?

A. I am associated with the Watchtower Bible & Tract Society, Brooklyn, New York.

Q. Is the Watchtower Bible & Tract Society a corporation?

A. It is a legal corporation, organized to advance and promote the preaching of God's kingdom.

Q. It is an organization, a corporation organized for pecuniary gain or a benevolent organization—charitable organization?

A. Charitable organization.

Q. As a minister of the gospel, do you regard yourself as one of Jehovah's witnesses?

A. I do.

Q. You go by that name generally, do you not?

A. I am recognized as one of Jehovah's witnesses.

[fol. 40] Q. Is the Watchtower Bible & Tract Society the visible head of Jehovah's witnesses?

A. Yes, sir.

Q. Who are Jehovah's witnesses?

A. There is a long list of them named in the Bible in the 11th chapter of Hebrews, Abel who was killed by his brother Cain was the first one. Generally speaking, it might be said that any person who remains faithful to Almighty God's side of the issue and upholds and preaches righteousness according to the scriptures is one of them.

Q. What were you doing in the City of Hondo, Medina County, during the eight months you lived there?

A. My work was calling upon the people preaching the good news and showing the establishment of the kingdom and trying to find those of good-will and conduct systematic Bible studies and leave with them literature which would greatly aid them in their own private studying.

Q. You say you are a minister. Do you have an ordination from your organization?

A. I have the scriptural ordination which comes from Almighty God as recorded at Isaiah 61:1-3. "The Spirit of the Lord God is upon me; because the Lord hath anointed me to preach good tidings unto the meek, he hath sent me to bind up the broken-hearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; to proclaim the acceptable year of the Lord, and the day of vengeance of our God; to comfort all that mourn; To appoint unto them that mourn in Zion, to give unto them beauty for ashes, the oil of joy for mourning, the gar-[fol. 41] ment of praise for the spirit of heaviness; that they might be called Trees of righteousness, The planting of the Lord, that he might be glorified." Also, I have an ordination from the Watchtower Bible & Tract Society as the visible governing body of God's Kingdom on earth.

Q. When did you become ordained as a minister?

A. In June of 1940.

Q. How did you become ordained?

A. Ordination is an acceptance by the Almighty God of one's consecration to do his will and that it visibly be made known to the peoples of the earth by baptism which symbolizes the agreement made between the individual and Almighty God.

Q. You have never attended a theological school of any kind?

A. I attended the Watchtower Bible & Tract Society College known as Gilead College of New York. This is not a theological college as that term is commonly known among the religious organizations of the day. It is used by Jehovah's witnesses exclusively for the purpose of better equipping those who attend as special ambassadors or missionary evangelists in foreign service.

Q. Did you receive a degree or a diploma from that school?

A. I have a diploma showing the finish of the regular course of study.

Q. Do you have that with you?

A. I do.

Q. May I see it? (Witness hands diploma to counsel.) We want to offer this in evidence, your Honor.

Mr. Vance: The State doesn't question his being ordained [fol. 42] or being a minister.

The Court: All right.

(The instrument in question was thereupon received in evidence by the court, was marked for identification as Defendant's Exhibit 1, and was, at the conclusion of the trial, withdrawn and a true copy substituted therefor, which is attached. For copy see index.)

Q. Now, it alleged in the complaint that you were out on A. B. Purinton's property on or about the 5th day of October, 1944, and the evidence shows that that is the United States Navigation Village. Were you in that Village on that date?

A. Yes, sir.

Q. Do you know Mr. Purinton, the complaining witness?

A. I do.

Q. When did you first see him?

A. About September, the latter part of September.

Q. Where were you—where did you see him?

A. I went out into the Village to call upon the people and saw him in his own office.

Q. Did you have a conversation with him?

A. I did.

Q. Tell the court the gist of that conversation?

A. I made known to Mr. Purinton after being directed to him as the manager of the Village that my work was that of a minister, being so recognized as such by the Watchtower Bible & Tract Society. I showed him the

literature and explained that my work was merely doing a good work, to assist the people to obtain Bible helps directing their attention to the Bible and also showing [fol. 43] them how to study the Bible systematically, and calling their attention mainly to the scriptures concerning the establishment of God's kingdom, the wonderful provisions that God has made for the people of good-will concerning that kingdom.

Q. What did he tell you?

A. He stated briefly that I would not be allowed to work in that Village according to the method I was using.

Q. Did he tell you that you were a peddler?

A. No, he didn't use any such word.

Q. Did you make known to him that you were a preacher, a minister of the gospel, and that was your mission out there?

A. Yes, sir.

Q. Calling on the people?

A. I made such very plain.

Q. Did he tell you to leave the premises?

A. He said, "You cannot work here."

Q. Couldn't work there. How were you working out there, what were you doing?

A. I was merely preaching. I was going from house to house knocking on the doors and engaging in conversation with the people that came to the doors and explaining to them the full extent of my work, how they would benefit by it.

Q. Did you refuse to leave the premises of any of the occupants or tenants out there after they requested you to leave?

A. I did not refuse to leave any house and there were no complaints that I should leave any of the houses. No one asked me to leave but Mr. Purinton and I left his house and did not return after being requested to do so. [fol. 44] There were persons who said that they would not be interested and I didn't need to waste any time with them.

Q. Did others show interest?

A. Others did, and received the literature and were glad to get it and promised to read it and invited me to come back.

Q. Now, it is in evidence that you called on Mr. Purin-

ton's home. Did you know that he was living there when you called upon that home?

A. No, I didn't have any idea that he lived there himself.

Q. Did he order you to leave?

A. He explained that I should leave the Village and never come back.

Q. However, before you left, did he make a purchase from you?

A. Yes, he received a booklet for which he gave me five cents.

Q. Now, did you leave his premises at that time?

A. I left his house and the entire Village at the moment.

Q. At the moment. Did you ever go back out to his place?

A. No.

Q. The home that he was living in?

A. At no time.

Q. Now, you are charged with being a peddler and hawker of merchandise, and Mr. Purinton has testified that he purchased a booklet from you. How do you explain that discrepancy and how do you explain that you say you are a minister and not a peddler?

A. A minister necessarily must explain and preach from what he sees in the Bible, and we do so by the publications which contain sermons directing their attention to the scrip-[fol. 45] tures, a manner which most church organizations likewise use to encourage their parishioners to examine the scriptures, they have the same means. The booklet I placed with Mr. Purinton was a written sermon.

Q. Is this done in a church or done in the street work?

A. Are you referring to the work I do?

Q. Yes, your work?

A. It is done at the houses and in the street, wherever we can contact the people.

Q. Why don't you go to your church to preach as other religious organizations do?

A. Jehovah's witnesses do not have any place called churches. Their work is directed by the scriptures in Matthew to call at the houses and speak directly to the people.

Q. Now, it is alleged that you refused to leave the premises after being requested to do so by Mr. Purinton, is that true?

A. That is true, I refused to leave Navigation Village.

Q. You mean by that you refused to leave the Navigation Village?

A. Yes, sir.

Q. Why didn't you leave the Navigation Village when you were requested to leave by Mr. Purinton.

A. The Christian is always guided by the scriptures which commands work to be done, not in obedience to man, but in obedience to Almighty God. This good gospel of the kingdom must be preached to all creatures possible and it is left up to the creature to decide and Almighty God what he wishes to do about it. Therefore, in any locality where there are people residing they have the right to [fol. 46] accept or reject visitors at their homes. Some hear this good message that I preach because the Lord is now dividing the people as sheep from goats and it is necessary that the person hear the message of the gospel in order to place himself in one group or the other.

Q. Was that your reason for refusing to leave the Navigation Village when you were requested to by the complaining witness, Mr. Purinton?

A. Yes, sir, my position is that I should obey God rather than man.

Q. Explain yourself, that is a vague statement.

A. An examination of the scriptures shows that disciples went from house to house and community to community and likewise I must do that also, and no man has the lawful right to prohibit me from carrying this good news to others, but if they do, I must obey God rather than them.

Q. Mr. Tucker, did you create a disturbance out in the Navigation Village?

A. I did not, at any time.

Q. Did you—I believe I asked this question before—did you refuse to leave the home of any individual after being requested to do so?

A. I did not. I was never requested by the occupants to do so.

Q. Then you were not out there peddling goods and merchandise on the 5th of October, 1944, as alleged in the complaint?

A. No, sir.

Q. And what were you doing out there?

A. I was preaching to the people of good-will who cared [fol. 47] to hear; I was delivering to them the message without charge concerning the establishment of the kingdom of God and inquiring of their interest so that I might call again some other day and sit down with them in their homes

and discuss the scriptures and invite them to study the Bible systematically.

Q. Mr. Tucker, is that your way of preaching and worshipping?

A. Yes. I wish merely to do a good work among all the people of good-will on the earth and then by calling upon them in their homes and inviting them to book studies and place literature explaining the Bible.

Q. That is your method of preaching, is that correct?

A. Yes, sir.

Q. And you tell the court that is what you were doing on the day you were arrested and charged in this complaint?

A. Yes.

Q. What was the name of the book you were offering to the people of Navigation Village?

A. The Truth Shall Make You Free.

Q. This book, I believe, was offered in evidence in this case at the time it was tried in Justice Court, was it not?

A. That is true.

Q. Is this the book (showing witness book)?

A. It is.

Mr. Williams: We offer it in evidence.

Mr. Vance: No objection.

(The book in question was thereupon received by the court, marked Defendant's Exhibit 2, and is attached hereto.)

[fol. 48] Cross-examination.

Questions by Mr. Vance:

Q. Mr. Tucker, how do you receive your literature, who from?

A. We have an arrangement through the Watchtower Bible & Tract Society from whom I receive the literature, that if I am constant in the work from day to day, working many hours and making backcalls on the people I have placed literature with, conducting studies and so forth, and I make my quota, I may continue to receive help.

Q. What do you mean by quota?

A. Our work is that I should go from house to house calling at least 175 hours each month and that I shall make return visits upon interested people who have expressed interest to further any interest we may have found. It is

a requirement that I make at least fifty backcalls or more each month, and if I meet these requirements I am entitled to a small allowance.

Q. Who do you receive the allowance from?

A. The Watchtower Bible & Tract Society of Brooklyn, New York.

Q. Well, now, this literature—I believe you stated that Mr. Purinton gave you five cents for some of the literature. You sell literature to those who pay for it?

A. Whoever wishes to receive such literature can contribute.

Q. Well, now, the contribution—is there a set price on the literature?

A. It belongs to the Watchtower Bible & Tract Society until it is placed into the hands of the people; they are the ones who arrange the contribution.

[fol. 49] Q. Now, then, you are paid from the Society in New York, and that is dependent upon whether you make these visits and distribute the literature?

A. Concerning my daily activities?

Q. In other words, if you did not make visits and dispose of literature you would receive no allowance?

A. If I didn't obtain the 175 hours or the fifty backcalls or more, then I would not receive any allowance.

Q. What I mean is your pay is dependent upon your dispersing this literature and making these visits, is it not?

A. If I did not place any literature, but I did go about the people explaining about God's kingdom and the scriptures, and made the 175 hours I would receive my allowance.

Q. But in other words your salary is dependent on your making so many visits, is that right, or doing so much work?

A. Yes, sir.

Q. During a month?

A. Yes, sir.

Q. Giving out this literature to those who will take it, is that right?

A. Yes, sir.

Q. And receiving pay for the literature or whatever those who give are willing to pay, is that right; donations?

A. Yes, sir.

Q. Now, if you go to the ome of a person who alleges to be or claims that he is a Christian and reads the Bible and all that, as a Christian should do, do you consider that

he was one of the goats that you spoke about if he was not interested in your particular type of literature?

[fol. 50] A. No, I have no judgment in the matter whatever; the Lord judges an individual himself and his angels, who are invisible assistants. They do the separating work. I am merely a bellboy or a telegram boy carrying the message to those who are willing to receive. My duties are that of carrying the good news of the kingdom which is soon to be established, to persons of good will and to the people of the nation and let them decide for themselves whether or not they will accept it.

Q. In other words, you are a missionary?

A. That is right.

Q. That is your method of doing it?

A. Yes, sir.

Q. Where you go as far as your denomination is concerned do you consider the other so-called Christians that are not interested in the Jehovah's witnesses group or in their teachings or their interpretation of the Bible, as Christians?

A. Well, my own opinion might be something and the Bible explanation might be another.

Q. I mean as far as your denomination, do they consider those people Christians?

Mr. Williams: Your Honor, unless he wants the defendant to go into the principal doctrines of Jehovah's witnesses I think this would be immaterial, unless the Court wants to pass on that, to hear it in its completeness.

Mr. Vance: That isn't necessary.

The Court: Continue the questioning, the witness is on [fol. 51] cross examination.

Q. Did Mr. Williams ask you if you had literature to sell and you stated yes?

A. I don't recall Mr. Williams asking any such question.

Q. You don't recall. But you did have your literature to sell?

A. Certainly.

Q. I think you stood on the streets here and have done that?

A. Yes, sir.

Mr. Vance: I believe that is all.

Mr. Williams: No further questions. The defendant rests.

Mr. Vance: The State rests.

MOTION TO DISMISS

Mr. Williams: I wish at this time to present the defendant's second written motion to dismiss and motion for acquittal.

(Motion presented and filed.)

The Court: Overruled.

Mr. Williams: Note our exception.

The Court: I want to study the cases cited and I am going to reserve judgment until I have had an opportunity to look over them. I will notify you in a day or so as to the decision I have reached.

(Testimony Closed.)

[fol. 52] COURT REPORTER'S CERTIFICATE

I, Earl B. Tippit, Court Reporter, do hereby certify that counsel for the defendant in said cause No. 1679, styled State of Texas versus A. R. Tucker, applied to me for a transcript of the reporter's notes of the evidence adduced and proceedings had in this suit; that I have carefully prepared a transcript of said notes, and that the foregoing 33 pages (together with the original exhibits hereto attached and those accompanying this record) constitute a full, true and correct transcript of all the evidence and proceedings shown; and that I am now filing an original and duplicate copy thereof in question and answer form among the papers in said cause.

To all of which I certify on this the 16 day of April, A. D., 1945.

Earl B. Tippit, Court Reporter.

[fol. 53] AGREEMENT OF COUNSEL

We, the undersigned, attorneys of record for plaintiff and defendant in cause No. 1679, styled the State of Texas versus A. R. Tucker, do hereby agree that the foregoing pages numbered 1 through 33 (together with the original exhibits

attached and those accompanying this record), constitute a true and correct transcript of all the oral testimony introduced upon the trial of this cause, together with the exceptions and objections to the introduction of testimony and the exceptions and objections to the exclusion of testimony, with the ruling of the court thereon (and the testimony excluded), and agree that the same may be filed as the Statement of Facts in said cause.

Dated this 17 day of April, A. D. 1945.

Frank X. Vance, Attorney for the State; Tom S. Williams, Attorney for the Defendant.

[fol. 53a] DEFENDANT'S EXHIBIT No. 1

Watchtower Bible College of South Lansing, New York

Hereby be it known that Arthur Raymond Tucker,

An Ordained Minister of the Gospel, has completed the full course of study and training of this college, with merit. He is therefore graduated as specially qualified to engage in educational work, promoting good-will and working in behalf of permanent peace and the law of perfect order and righteousness, among all peoples. He is specifically recommended for service as a representative of the founders of this college, the Watchtower Bible and Tract Society, to colabor with them in preaching the gospel of Jehovah God's kingdom by Christ Jesus.

June 23, 1943. N. H. Knorr, President; A. D. Schroeder, Registrar.

[fol. 54] IN COUNTY COURT OF MEDINA COUNTY

Petition for Appeal, Statement, Assignments of Error and Prayer for Reversal

PETITION FOR APPEAL

Considering himself aggrieved by the final decision of the County Court of Medina County, Texas, in the above entitled cause, the appellant herein, A. R. Tucker, hereby prays that an appeal be allowed to the Supreme Court of

the United States herein, and for an order allowing same and fixing the amount of the bond thereon.

STATEMENT

This case is one in which the validity of state legislation is drawn in question, to wit, Article 479, chapter 3 of the Texas Penal Code, reading as follows:

> "Any peddler or hawker of goods or merchandise who enters upon premises owned or leased by another and wilfully refuses to leave said premises after having been notified by the owner or possessor of said premises, or his agent, to leave the same, shall be fined not less than one nor more than twenty-five dollars."

Said statute was in force and effect at the time of the offense alleged in the complaint. It is drawn in question upon the ground that it is repugnant to the First and Fourteenth Amendments to the United States Constitution, insofar as it has been construed as a means of enforcing with criminal sanctions a regulation of the Federal Public [fol. 55] Housing Authority, adopted under the authority vested by Section 1548 of Title 42 of the United States Code. Said regulation prohibited peddlers, solicitors and hawkers from plying their trade in the Hondo Navigation Village without the prior permission of the Village Manager.

The County Court of Medina County, Texas, became the court of last resort in this cause by reason of the fact that this criminal action originated in the Justice Court for Precinct No. 1, Medina County, and was duly appealed to the County Court of Medina County where the cause was tried on appeal *de novo*, and the fine assessed against the appellant did not exceed the sum of $100. Under Article 53 of the Code of Criminal Procedure in such circumstance an appeal cannot be had to the Court of Criminal Appeals of Texas, the highest appellate court of criminal cases in Texas, and said judgment is final.

Therefore in accordance with the rules of the Supreme Court of the United States (Rule 46, paragraph 2) and 28 U. S. C. secs. 344 and 354, and Section 237 (a) of the Judicial Code, the appellant respectfully shows this Court that the case is one in which, under the legislation in force when the Act of January 31, 1928 (45 Stat. L. 54) was passed,

to wit, under Section 237 (a) of the Judicial Code (28 U. S. C., s. 344), a review could be had in the Supreme Court of the United States on a writ of error as a matter of right.

The County Court of Medina County, Texas, court of last resort in this cause, rendered its decision herein on the 29th day of January 1945. Thereafter, within the time allowed by law a motion for new trial was filed by appellant. That motion was overruled on March 5, 1945 and the judgment of the County Court thereupon became final.

[fol. 56] ASSIGNMENTS OF ERROR

Now comes the appellants in the above cause and files herewith, together with his petition for appeal, these assignments of error and says that they are errors committed by the court below in the record and proceedings of the above entitled cause, and for the purpose of having the same reviewed in the United States Supreme Court says that the court below erred in denying appellant's motions to dismiss filed (a) at the close of the case for the State [5]* and (b) at the close of all the evidence [6-7], and also in entering judgment of conviction, because

1. The statutes and the regulation, insofar as they have been construed and applied by the court below to allow the owner of the sidewalks and streets within the Village arbitrarily to prohibit appellant from distributing in an orderly manner Bible literature explaining God's Kingdom to persons residing in said Village, constitute an unreasonable abridgment of appellant's rights of freedom of speech, press, assembly and worship, contrary to the First and Fourteenth Amendments to the United States Constitution.

(a) The use to which the property in question has been dedicated by the Federal Public Housing Authority creates a relationship between the owner and the public similar to that existing between a municipal corporation and its constituents, and thus the constitutional limitations applicable to ordinances of municipal

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* Bracketed figures throughout this statement refer to page numbers of typewritten transcript of testimony.

corporations likewise apply to the Village management as a *de facto* municipal corporation.

(b) The statute is unconstitutional insofar as it has been construed and applied by the court below to be a [fol. 57] means of enforcing with criminal sanctions the regulation of the Federal Public Housing Authority that Jehovah's witnesses obtain a permit from the housing manager of the Village before preaching the gospel by means of distributing printed Bible sermons to the people residing in said Village.

(c) The statute is unconstitutional insofar as it has been construed and applied by the court below to be a means of enforcing with criminal sanctions the absolute prohibition imposed by the Federal Public Housing Authority on the activity of Jehovah's witnesses in preaching the gospel by means of distributing printed Bible sermons to the people residing in said Village.

2. As they have construed and applied by the court below to abridge and deny appellant's constitutionally guaranteed rights of freedom of speech, press, assembly and worship, the statutes and the regulation are presumptively unconstitutional, and which presumption the State has failed to overcome by a showing that they are reasonable and necessary means to prevent a clear, present and substantial danger to the public peace and order, or right of private property.

3. The statutes and the regulation are unconstitutional on their face and as construed and applied by the court below in that they are not narrowly drawn laws that define and punish specific conduct, but are vague, indefinite, uncertain, too general, fail to furnish a sufficiently ascertainable standard of guilt, permit speculation and amount to a dragnet, contrary to the due process and equal protection clauses of the Fourteenth Amendment to the Federal Constitution.

[fol. 58] PRAYER FOR REVERSAL

For and on account of the above errors, the appellant, A. R. Tucker, prays that the said judgment of the County Court of Medina County, Texas, hereinbefore described in the above entitled cause be reviewed by the Supreme Court

of the United States and reversed, and a judgment rendered in favor of appellant and for his costs.

Hayden C. Covington, 117 Adams Street, Brooklyn 1, New York. Telephone Triangle 5-1474; Attorney for Appellant. Tom S. Williams, Attorney at Law, 2516 Pleasant Rd., San Antonio, Texas.

[fol. 59] In County Court of Medina County

[Title omitted]

Order Allowing Appeal

Appellant, A. R. Tucker, in the above entitled cause has prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment rendered by the County Court of Medina County, Texas, on January 29, 1945, and made final on March 5, 1945 by overruling of defendant's motion for new trial, all of which was duly entered of record in the criminal minutes of this court.

It appearing that the appellant in his motions and argument of counsel made in his behalf in this cause attacked the statute in question on the grounds, as contended by him, that it was void and in excess of the police power of the State because it conferred arbitrary and discriminatory power upon the Manager of the Hondo Navigation Village and that as construed and applied it was violative of the fundamental freedoms guaranteed and secured by the First and Fourteenth Amendments to the Constitution of the United States, all of which contentions were overruled by the decision and judgment of this court rendered herein, and

It appearing that appellant has presented and filed his petition for appeal to the Supreme Court of the United States, a statement, assignments of error and prayer for reversal and jurisdictional statement, all within three (3) [fol. 60] months from date of said final judgment of the County Court, the court of last resort in Texas under which a decision can be had in this cause, pursuant to the statutes and rules of the Supreme Court of the United States in such case made and provided,

It Is Now Here Ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United

States from the judgment of the County Court of Medina County, Texas, in the aforesaid cause as provided by law, and

It Is Further Ordered that the Clerk of the County Court of Medina County, Texas, shall prepare and certify a transcript of the record, stipulation of the evidence together with all exhibits in their original form incorporated by reference, the proceedings and judgment in the said cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said Court within twenty (20) days from this date.

And It Is Further Ordered that a bond on appeal for appearance and costs on appeal be fixed in the sum of Five Hundred ($500) Dollars and appellant having presented an undertaking conditioned as required by law in the sum of Five Hundred ($500) Dollars executed by good and sufficient sureties, it is farther ordered that such undertaking or bond be and the same is hereby approved and ordered filed.

It Is Further Ordered that the issuance of capias profine be stayed pending a final disposition of this appeal and until the return of the mandate from the Supreme Court of the United States.

Done at Hondo, Medina County, Texas, on this 17th day of April A. D. 1945.

Arthur H. Rothe, Judge of County Court of Medina County, Texas.

[fols. 61-90] Citation in usual form showing service on Francis X. Vance omitted in printing.

[fol. 91] STATEMENT OF POINTS RELIED ON—Filed May 25, 1945

Comes now appellant, A. R. Tucker, in the above entitled cause and states that the points upon which he intends to rely in the Supreme Court of the United States in this cause are as follows:

1. The statutes and the regulation, insofar as they have been construed and applied by the court below to allow the owner of the sidewalks and streets within the Village arbi-

trarily to prohibit appellant from distributing in an orderly manner Bible literature explaining God's Kingdom to persons residing in said village, constitute an unreasonable abridgment of appellant's rights of freedom of speech, press, assembly and worship, contrary to the First and Fourteenth Amendments to the United States Constitution.

(a) The use to which the property in question has been dedicated by the Federal Public Housing Authority creates a relationship between the owner and the public similar to that existing between a municipal corporation and its constituents, and thus the constitutional limitations applicable to ordinances of municipal corporations likewise apply to the Village management as a *de facto* municipal corporation.

[fol. 92] (b) The statute is unconstitutional insofar as it has been construed and applied by the court below to be a means of enforcing with criminal sanctions the regulation of the Federal Public Housing Authority that Jehovah's witnesses obtain a permit from the housing manager of the Village before preaching the gospel by means of distributing printed Bible sermons to the people residing in said Village.

(c) The statute is unconstitutional insofar as it has been construed and applied by the court below to be a means of enforcing with criminal sanctions the absolute prohibition imposed by the Federal Public Housing Authority on the activity of Jehovah's witnesses in preaching the gospel by means of distributing printed Bible sermons to the people residing in said Village.

2. As they have been construed and applied by the court below to abridge and deny appellant's constitutionally guaranteed rights of freedom of speech, press, assembly and worship, the statutes and the regulation are presumptively unconstitutional, and which presumption the State has failed to overcome by a showing that they are reasonable and necessary means to prevent a clear, present and substantial danger to the public peace and order, or right of private property.

3. The statutes and the regulation are unconstitutional on their face and as construed and applied by the court below

in that they are not narrowly drawn laws that define and punish specific conduct, but are vague, indefinite, uncertain, too general, fail to furnish a sufficiently ascertainable standard of guilt, permit speculation and amount to a drag-net, contrary to the due process and equal protection clauses of the Fourteenth Amendment to the Federal Constitution.

[fol. 93] For the above reasons the judgment of the County Court of Medina County, Texas, should be reversed.

Hayden C. Covington, 117 Adams Street, Brooklyn 1, New York. Tom S. Williams, 2516 Pleasanton Road, San Antonio, Texas, Attorneys for Appellant.

[fol. 93a] [File endorsement omitted.]

[fol. 94] SUPREME COURT OF THE UNITED STATES

DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed May 28, 1945

To the Clerk of the Supreme Court of the United States:

Please print the following documents for the printed transcript of the record on appeal to this Court in the above entitled and numbered cause, to wit:

1. The complaint and one-page transcript from Justice of Peace Court.
2. Motion to dismiss, filed in the County Court.
3. Order overruling motion to dismiss.
4. Motion for judgment of acquittal.
5. Order overruling motion for judgment.
6. Stenographer's or reporter's statement of facts containing the evidence as filed in the County Court.
7. Judgment of conviction.
8. Motion for new trial and order overruling same.
9. Petition for allowance of appeal to the Supreme Court of the United States, Statement, Assignments of Error and Prayer for Reversal.
10. Citation signed by the Judge of the County Court.

11. Order allowing appeal to the Supreme Court of the United States.

12. Statement of points to be relied upon.

Dated: May 26, 1945.

Hayden C. Covington, 117 Adams Street, Brooklyn 1, N. Y., Attorney for Appellant.

[fol. 94a] [File endorsement omitted.]

[fol. 95] SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION—October 8, 1945

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Mr. Justice Jackson and Mr. Justice Burton took no part in the consideration or decision of this question.

Endorsed on cover: Enter Hayden Covington. File No. 49761 Texas County Court of Medina County. Term No. 87. A. R. Tucker, Appellant, vs. The State of Texas. Filed May 24, 1945. Term No. 87 O. T. 1945.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 1303 87

A. R. TUCKER,

Appellant,

vs.

THE STATE OF TEXAS

APPEAL FROM THE COUNTY COURT OF MEDINA COUNTY, TEXAS

STATEMENT AS TO JURISDICTION

HAYDEN C. COVINGTON,
TOM S. WILLIAMS,
Counsel for Appellant.

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COUNTY COURT OF MEDINA COUNTY

A. R. TUCKER,

Appellant,

vs.

THE STATE OF TEXAS,

Appellee

ON APPEAL TO THE SUPREME COURT OF THE UNITED STATES

JURISDICTIONAL STATEMENT

In compliance with Rule 12 (1) of the Supreme Court of the United States, as amended April 6, 1942, appellant files his statement disclosing the basis upon which he contends that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment in question.

Statutory Provisions Sustaining Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code or 28 U. S. C. 344 (a).

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statute could be received as a matter of right on writ of error. This case presents a state of facts within the jurisdiction of this Court.

Legislation Drawn in Question

The legislation, the constitutionality and validity of which is here drawn in question is Article 479, Chapter 3 of the Texas Penal Code, which provides:

> "Any peddler or hawker of goods or merchandise who enters upon premises owned or leased by another and wilfully refuses to leave said premises after having been notified by the owner or possessor of said premises, or his agent, to leave the same, shall be fined not less than one nor more than twenty-five dollars."

Also drawn in question is Section 1548 of Title 42 of the United States Code, which empowers the Administrator of the Federal Public Housing Authority to "establish reasonable standards of safety and health" in Defense Housing Projects. Pursuant to authority vested by this provision of the laws of the United States, a rule was promulgated by the Federal officials for the Hondo Navigation Village, prohibiting peddlers, solicitors and hawkers from plying their trade within the limits of said Village without the permission of the manager of the Village.

How Legislation Construed by Court Below

Article 479, Chapter 3, of the Texas Penal Code was construed so as to furnish criminal sanctions for violation of the rule of the Hondo Navigation Village prohibiting peddling, soliciting, and hawking within the limits of said Village without the prior permission of the housing manager. *The code provision was not restricted so as to give protection to individual housesholders troubled by peddlers, hawkers and solicitors who refused to leave when ordered so to do, but was broadly construed so as to enable the manager of the Village to absolutely prohibit appellant from calling at any of the homes within said Village, without his*

prior permission. Thus, for all intents and purposes, the Code provision has been construed so as to constitute a peddler's permit law of the type repeatedly struck down by this Court.[1]

The County Court of Medina County, Texas, the highest court of Texas in which a decision can be obtained in this cause, held that the statute was valid and constitutional and that it did not abridge appellant's rights of free speech, free press and his freedom to worship and serve ALMIGHTY GOD according to His written commands contained in the Bible and according to appellant's conscience. Said County Court also held that said statute was not unconstitutional because unreasonable and in excess of the police powers of the State and hence contrary to the Fourteenth Amendment. The court also refused to hold that the statute conferred authority at once arbitrary and discriminatory, upon the manager of the Village, contrary to the Fourteenth Amendment to the Federal Constitution. That court of last resort of the State of Texas sustained the application of the statute to appellant and decided in favor of the validity of same under the Federal Constitution and held that it was constitutional on its face and as construed and applied.

County Court of Medina County Is Court of Last Resort

Appellant was fined only One ($1) Dollar and costs by the County Court on appeal from a judgment of a Justice of the Peace. Article 53 of the Code of Criminal Procedure for Texas, 1925, provides that the Court of Criminal Appeals of Texas does not have jurisdiction of an appeal from a judgment rendered by the County Court on trial *de novo* on appeal from a Corporation or Justice Court where the fine assessed in the County Court does not exceed the sum

[1] *Largent* v. *Texas*, 318 U. S. 418 (1943); *Schneider* v. *New Jersey*, 308 U. S. 147 (1939); *Lovell* v. *Griffin*, 303 U. S. 444 (1938).

of $100.00 and costs. Other articles of the Code of Criminal Procedure confer exclusive appellate jurisdiction of misdemeanor offenses tried in the County Court where the fine does not exceed $100.00 and costs on trial *de novo* in the County Court. *Ex parte Largent*, 162 S. W. 2d 419. The County Court of Medina County is the court of last resort and the highest court in the State of Texas in which a decision could be had in this cause, although said County Court is not the highest criminal court of appeals in the State. This Court has so held in other cases. *Largent* v. *Texas*, 318 U. S. 418; *Thomas* v. *Rabb*, 267 U. S. 564; *Bacon* v. *Texas*, 163 U. S. 207; *Sullivan* v. *Texas*, 207 U. S. 416, and *S. A. & A. P. R. Co.* v. *Wagner*, 241 U. S. 476.

Timeliness

The judgment of the Medina County Court assessing a fine of One ($1) Dollar and costs was rendered and entered on the 29th day of January 1945 [4].. Thereafter, within the time allowed by law, a motion for new trial was filed by appellant and said motion was overruled on the 5th day of March 1945 [12]. The judgment of the County Court thereupon became final. This petition for appeal is duly presented and filed within three months from the date such judgment became final and is therefore timely.

Opinion

No opinion was filed by the Medina County Court in this cause.

Statement of the Case

Facts

Appellant is an ordained minister of the gospel, and as such is one of Jehovah's witnesses [38-51]. The Watchtower Bible and Tract Society, under direction of which he carried

forward his ministerial activities, assigned him to serve the church at Hondo, Texas, in the latter part of 1943. He carried with him proper credentials showing that he had been trained as a minister and that he was a representative of said Society [53-A]. He testified that Jehovah's witnesses were the true servants of the Most High God, many of whom are named in the eleventh chapter of Hebrews in the Holy Bible [40]. The purpose of this Christian group, he said, was to bring the people the message of and concerning Christ's Kingdom as the appointed government of Almighty God, and to do this by calling on the people from door to door and there presenting to them printed literature fully explaining how they may obtain everlasting life under that permanent righteous government for obedient creatures [40]. As his authority for doing this work he quoted the passage at Isaiah 61:1-3, which reads as follows:

> "The Spirit of the Lord God is upon me; because the Lord hath anointed me to preach good tidings unto the meek; he hath sent me to bind up the brokenhearted, to proclaim liberty to the captives and the opening of the prison to them that are bound; to proclaim the acceptable year of the Lord, and the day of vengeance of our God; to comfort all that mourn; to appoint unto them that mourn in Zion, to give unto them beauty for ashes, the oil of joy for mourning, the garment of praise for the spirit of heaviness; that they might be called trees of righteousness, the planting of the Lord, that he might be glorified" [40-41].

In addition to distributing Biblical literature to the people from door to door, he said that he also arranged to conduct systematic Bible studies with those who desired to have same arranged in their homes.

A part of the town of Hondo, Texas, is known as the Hondo Navigation Village. This village was constructed by the Federal Public Housing Authority, an agency of the

United States Government [23, 24]. Erected as a part of the Defense Housing Program, this village provided house trailer and bungalow accommodations for several hundred families. A. B. Purinton, the complaining witness, testified that he was the duly appointed manager of this village [20]. He said that although he did not personally own the village, it was government property and that he was the agent of the government in charge of same [25]. He testified that the Federal Public Housing Authority had prescribed certain rules for the management of such projects, and that it was his duty to see that those rules were enforced [20]. Among others, there was a rule that required all peddlers, solicitors and hawkers to apply for and obtain a permit from the village manager before they were allowed to carry on their trade in the village. The rule itself was not specific as to what kind of peddlers, hawkers or solicitors were within the rule, and Mr. Purinton said that he included Jehovah's witnesses within that category [20-21]. Furthermore, Mr. Purinton, pointed out, the rule applied to all ministers of all denominations, and that no one could come into the village and preach unless he had secured a permit so to do [33]. It appeared that there was no particular criterion for judging who would be entitled to a permit, but that the issuance of permits was within the discretion of the village manager [30, 33].

Shortly after his arrival in Hondo, appellant in the course of calling from door to door on all the homes in the community, entered the Hondo Navigation Village and began calling on the people there. He would rap on the door and when someone responded, he would tell them that he was a minister of the gospel. He would then proceed to explain briefly to them why it was that Jehovah's witnesses were going from door to door warning the people of the approaching doom of all wickedness and evil in the earth. Literature

explaining the matter more in detail, and giving the Biblical evidence in support thereof was always provided for examination. If the person desired to have the literature, opportunity was given to contribute toward the benevolent work being done and to assist in printing more like literature. Sometimes, if the people did not have any money to contribute, but expressed a desire to have the literature, it was left without receiving any contribution on the condition that it be read.

While appellant was thus engaged in calling on the people from door to door, Mr. Purinton learned of his activities in the Village and sent one of his employees to ask appellant to come to his office [29]. Appellant thereupon went to Mr. Purinton's office and being called upon to explain his activities, he pointed out that he was a minister of the gospel, showed him the literature he was distributing, explained that he was doing a work for the good of the people in that he was directing their attention to the Bible, showing them how to study it systematically and assisting them to understand "the Scriptures concerning the establishment of God's kingdom, the wonderful provisions that God has made for the people of goodwill concerning that Kingdom" [42, 43] He made it very plain that he was a minister and not a peddler [43]. However, Mr. Purinton advised him that he could not call from door to door within the Village regardless of the ministerial character of his work because he felt that it would disturb the people in the Village [30, 31]. He then ordered appellant to leave and not persist in this activity [44]. Appellant left [44].

Several days later, while driving through the Village, he happened to see appellant again calling from door to door with his literature. He stopped and again warned appellant that such practice was not permitted and that he would have to quit [31].

On October 5, 1944 appellant again entered the Village and was calling from door to door. In the course of his visits he happened to call at the home of Mr. Purinton, not knowing that he resided there. Mr. Purinton testified that appellant "seemed surprised that he came to my house, and he said, 'I believe I talked to you in your office.' I stated, 'Yes, you know you did and I informed you at that time you couldn't solicit out here,' and he started talking to me and I asked him if he had any literature or anything to sell, I said, 'What do you have here to sell,' and he said he had a pamphlet to sell, that it was a nickel, and I bought it" [32]. He said that he did not get the book to read, but for evidence [32]. He then ordered appellant to leave his home and the Village [44]. Appellant promptly left Mr. Purinton's home and also the Village [44].

Appellant said that none of the people residing in the Village had told him to leave their homes or the Village, with the exception of Mr. Purinton [43]. Although some of the people had not manifested interest in the work he was doing, many persons gladly received the literature, contributed to the work being done and invited appellant to come back [43-44].

The literature was being distributed by appellant as a substitute for oral sermons, and to provide means whereby the people could study the Bible in the quiet of their home [47]. He pointed out that Jehovah's witnesses had no churches where Sunday sermons were preached, but that they considered it their duty to go from house to house and speak directly to the people concerning the Bible, which was the manner of gospel preaching commanded in the Scriptures [45]. He further explained that he did not leave the Village when ordered so to do by the manager for the reason that Jehovah God had commanded that the gospel message be preached to every creature and that it was

thus up to the creature in each instance to decide whether he would accept or reject it, and that the manager had neither the legal nor Scriptural right to make this decision for the people [45, 46]. He said that he worshiped God by telling others of Jehovah's gracious provision for mankind and that he could not obey man's command to stop worshiping, for to do so would mean his everlasting destruction [46].

The complaint sworn to by Mr. Purinton charged that appellant entered "upon premises owned by A. B. Purinton * * * and did then and there unlawfully and wilfully refuse to leave said premises after having been notified by the said A. B. Purinton, the owner of same." Mr. Purinton admitted that he was not the owner of the Village, but that it was government property, and that he was agent for the government and in full control of same as well as the "lives of all the people" there [25]. He also testified that he was not complaining that appellant had refused to leave his home when ordered so to do, because appellant had promptly left his house when he told him to leave [34]. His complaint was that appellant persisted in coming into the Village and calling from door to door, having been ordered not to do so [34].

Grounds and Decisions Sustaining Appellate Jurisdiction of the Supreme Court of the United States and Showing Federal Questions Involved on Appeal.

One

The statute and regulation insofar as they have been construed and applied by the court below to allow the Village manager arbitrarily to prohibit appellant from distributing Bible literature among the people residing in said Village, constitute an unreasonable abridgment of appellant's rights

of freedom of speech, press, assembly and worship, contrary to the First and Fourteenth Amendments to the United States Constitution.

A

The use to which the property in question has been dedicated by the Federal Public Housing Authority and used by the people creates a relationship between the Village management and the public similar to that existing between a municipal corporation and its constituents, and thus the constitutional limitations applicable to ordinances of municipal corporations likewise apply to the Village management acting as a *de facto* municipal corporation.

Davis v. *Massachusetts*, 167 U. S. 43 (1897);
Hague v. *C. I. O.*, 307 U. S. 496 (1938);
Jamison v. *Texas*, 318 U. S. 413 (1943);
Thornhill v. *Alabama*, 310 U. S. 88 (1940);
Valentine v. *Chrestensen*, 316 U. S. 52, 55 (1941).

B

The statutes and regulations are unconstitutional as they have been construed and applied by the court below to be a means of enforcing with criminal sanctions the demand of the Village management that Jehovah's witnesses obtain a permit from the housing manager of the village before preaching the gospel by means of distributing printed Bible sermons to persons residing in the Village.

Blue Island v. *Kozul*, 379 Ill. 511, 41 N. E. 2d 868 (1942);
Borchert v. *Ranger*, 42 F. Supp. 577 (1941);
Cantwell v. *Connecticut*, 310 U. S. 296 (1940);
Enoch v. *Guymon*, 75 Okla. Cr. 1, 127 P. 2d 855 (1942);
Florida ex rel. Hough v. *Woodruff*, 147 Fla. 299, 2 S. (2d) 577 (1941);

Florida ex rel. Wilson v. *Russell*, 146 Fla. 539, 1 S. (2d) 569 (1941);
Largent v. *Texas*, 318 U. S. 418 (1943);
Lovell v. *Griffin*, 303 U. S. 444 (1938);
Near v. *Minnesota*, 283 U. S. 697, 713-716 (1931);
Schneider v. *New Jersey*, 308 U. S. 147 (1939);
Tucker v. *Randall*, 18 N. J. Misc. 675, 15 A. (2d) 324 (1940).

C

The statutes and regulations are unconstitutional insofar as they have been construed and applied by the court below to be a means of enforcing with criminal sanctions the absolute prohibition imposed by the Village management on the activity of Jehovah's witnesses in preaching the gospel by means of distributing printed Bible sermons to the people residing in the Village.

Carlson v. *California*, 310 U. S. 106 (1940);
Jamison v. *Texas*, 318 U. S. 413 (1943);
Jones v. *Opelika*, 316 U. S. 584 (1942), reversed at 319 U. S. 103;
Near v. *Minnesota*, 283 U. S. 697 (1931);
Thornhill v. *Alabama*, 310 U. S. 88 (1940);
Walrod, Ex parte, 73 Okla. Cr. 299, 120 P. (2d) 783 (1941);
Winnett, Ex parte, 73 Okla. Cr. 332, 121 P. (2d) 312 (1942);
Zimmermann v. *London*, 38 F. Supp. 582 (1941).

Two

As it has been construed and applied by the Court below to abridge and deny appellant's constitutionally guaranteed rights of freedom of speech, press, assembly and worship, the statute, as well as the regulation, is presumptively unconstitutional, and which presumption the State has failed

to overcome by a showing that both of those enactments are reasonable and necessary means to prevent a clear, present and substantial danger to the public peace and order, or right of private property.

Bridges v. *California*, 314 U. S. 252, 262, 273 (1941);
Busey v. *Dist. of Columbia*, 138 F. (2d) 592, 78 App. D. C. 189 (1943);
De Jonge v. *Oregon*, 299 U. S. 353 (1937);
Schneider v. *New Jersey*, 308 U. S. 147 (1939);
Thomas v. *Collins*— U. S. —, 65 S. Ct. 315, 322 (1945);
Thornhill v. *Alabama*, 310 U. S. 88 (1940);
West Virginia State B'd of Educ'n v. *Barnette*, 319 U. S. 624, 638 (1943);
United States v. *Carolene Prod. Co.*, 304 U. S. 144, 152 (1938);
Jackson, Robert H., *The Struggle for Judicial Supremacy* (New York, Knopf, 1941), p. 285.

THREE

The statutes and regulations are unconstitutional on their face and as construed and applied by the court below in that they are not narrowly drawn laws, defining and punishing specific conduct, but are vague, indefinite, uncertain, too general, and both fail to furnish a sufficiently ascertainable standard of guilt, permit speculation and amount to a dragnet, contrary to the due process and equal protection clauses of the Fourteenth Amendment to the Federal Constitution.

Connally v. *General Constr. Co.*, 269 U. S. 385, 391, 392 (1925);
De Jonge v. *Oregon*, 299 U. S. 353 (1937);
Herndon v. *Lowry*, 301 U. S. 242 (1936);
Lanzetta v. *New Jersey*, 306 U. S. 451 (1939);
Massachusetts v. *Reilly*, 248 Mass. 1, 4 (1924);

New Jersey v. *Klapprott*, 127 N. J. L. 359, 22 A. 2d 877 (1941);
Small Co. v. *American Sugar Ref'g Co.*, 267 U. S. 233 (1925);
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Thornhill v. *Alabama*, 310 U. S. 88, 100 (1938);
Tozer v. *United States*, 52 Fed. 917, 919 (1892);
United States v. *Capital Traction Co.*, 34 App. D. C. 592 (1910);
United States v. *Cohen Grocery Co.*, 255 U. S. 81 (1920);
Weeds, Inc. v. *United States*, 255 U. S. 109 (1920).

Discussion

Save for two slight differences, the issues involved in this appeal are identical with those presented in the companion case of *Grace Marsh* v. *State of Alabama*, docketed June 6th, 1945 as No. 1352, October Term, 1944. The first difference is that in the one instance the owner of the property is the Federal Government and in the other it is a private corporation. But this is not a material difference.

The other variation is that in the instant case the objection of the Village management was directed against the practice of calls being made from door to door by Jehovah's witnesses, while in the *Marsh* case the management objected to the distribution of magazines to people passing up and down the sidewalk in its community shopping center. It will be sufficient to mention in this connection that the construction of the statute by the court below brings this case directly within the ruling of this court in *Martin* v. *Struthers*, 319 U. S. 141 (1943), wherein it was held that a municipal regulation prohibiting door-to-door visitation for the purpose of distributing printed matter was declared unconstitutional. The combined operation of the statute

and regulation in the instant case accomplishes the same result as the Struthers ordinance insofar as the people residing in the Hondo Navigation Village are concerned. For the reasons expressed in this court's opinion in the *Struthers* case, the Texas statute must fall.

In all other respects, the issues in *Grace Marsh* v. *State of Alabama* are identical with those in the instant case, and hence the discussion in the Jurisdictional Statement filed in the *Marsh* case is hereby incorporated by reference. Likewise, each and every assignment of error contained in the Petition for Appeal filed in this cause is here incorporated by reference to show that substantial federal questions are raised.

WHEREFORE the Supreme Court of the United States should note jurisdiction of this cause for final hearing in accordance with the rules of the court, because the court below disposed of important and substantial federal questions in a way that is in conflict with applicable decisions of this court, and has so radically and far departed from the Constitution of the United States and the accepted sound course of judicial procedure as to call for this court's power of supervision and review to halt the same.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1945

■

No. 87

A. R. TUCKER, *Appellant*

v.

THE STATE OF TEXAS, *Appellee*

APPEAL FROM THE COUNTY COURT OF
MEDINA COUNTY, TEXAS

HAYDEN C. COVINGTON TOM S. WILLIAMS
Counsel for Appellant

■

No. 114

GRACE MARSH, *Appellant*

v.

THE STATE OF ALABAMA, *Appellee*

APPEAL FROM THE COURT OF APPEALS OF
THE STATE OF ALABAMA

HAYDEN C. COVINGTON GROVER C. POWELL
Counsel for Appellant

■

JOINT BRIEF FOR APPELLANTS

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1945

■

No. 87

A. R. TUCKER, *Appellant*

v.

THE STATE OF TEXAS, *Appellee*

APPEAL FROM THE COUNTY COURT OF
MEDINA COUNTY, TEXAS

■

Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code or 28 U. S. C. 344 (a).

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statute could be received as a matter of right on writ of error.

Judgment of conviction was entered January 29, 1945. [1-2] * Appellant's motion for new trial was overruled on March 5, 1945. [5] On April 17, 1945, the papers upon appeal to this court were duly filed in the court below. [30-38] The order allowing appeal was entered April 17, 1945. [35]

Opinion

No opinion was rendered by the court below. The judgment of conviction constitutes the decision of the court. [1-2]

* Bracketed figures in this brief refer to pages of the records of the respective cases.

Statutes and Regulation Involved

The legislation the constitutionality and validity of which is here drawn in question is Article 479, Chapter 3 of the Texas Penal Code, which provides:

"Any peddler or hawker of goods or merchandise who enters upon premises owned or leased by another and wilfully refuses to leave said premises after having been notified by the owner or possessor of said premises, or his agent, to leave the same, shall be fined not less than one nor more than twenty-five dollars."

Also drawn in question are Sections 1547 and 1548 of Title 42 of the United States Code (54 Stat. 1128, 55 Stat. 363). These statutes empower the Administrator of the Federal Public Housing Authority to "establish reasonable standards of safety and health" in Defense Housing Projects and deny him the power to infringe on civil liberties. Pursuant to authority vested by these provisions of the laws of the United States, a rule was promulgated by the Federal officials for the Hondo Navigation Village prohibiting peddlers, solicitors and hawkers from plying their trade within the limits of said Village without the permission of the manager of the Village. It was wrongly applied so as to deny civil liberties contrary to the First and Fourteenth Amendments to the Federal Constitution.

Constitutional Provisions Involved

The First Amendment to the Federal Constitution guaranteeing freedom of speech, press and worship, and the Fourteenth Amendment securing due process of law and the rights guaranteed by the First Amendment are here involved.

How Statutes and Regulation Construed Below

Article 479, Chapter 3, of the Texas Penal Code was construed so as to furnish criminal sanctions for violation of the rule of the Hondo Navigation Village prohibiting peddling, soliciting, and hawking within the limits of said Village without the prior permission of the housing manager. The code provision was not restricted so as to give protection to individual householders troubled by peddlers, hawkers and solicitors who refused to leave when ordered so to do, but was broadly construed so as to enable the manager of the Village to absolutely prohibit appellant from calling at any of the homes within said Village, without his prior permission.

The court below held that the statutes were valid and constitutional and that they did not abridge appellant's rights of free speech, free press and his freedom to worship ALMIGHTY GOD. That court sustained the application of the statutes to appellant and decided in favor of the validity of same under the Federal Constitution and held that they were constitutional on their face and as construed and applied.

Questions Presented

1. Does the representative of the landlord of the Defense Housing Project, known as Hondo Navigation Village, have the power to censor and prohibit evangelistic preaching activity from door to door in the project?

2. Does the conviction of appellant under the Texas trespass statute, because he did not have a permit and refused to leave the Village when ordered by the manager, deprive him of his freedoms of speech and press and to worship ALMIGHTY GOD, contrary to the First and Fourteenth Amendments to the United States Constitution?

Form of Action and History

A complaint was filed in the Justice Court of Medina County, Texas, charging that appellant, being a peddler of merchandise, "did then and there unlawfully and wilfully refuse to leave said premises after having been notified by the said A. B. Purinton, the owner of same" to leave. [1] He was convicted and duly appealed to the County Court of Medina County. [5-6] On trial *de novo* before the County Court of Medina County on January 29, 1945, he was again adjudged guilty and committed. [1-2]

FACTS

The Hondo Navigation Village is located near Hondo in Medina County, Texas. [17] The Federal Public Housing Authority of the National Housing Agency operates the Village. [9] Situated in the Village are numerous housing units. [7] There are several streets in the Village. [14-15]

In charge of the Hondo Navigation Village is A. B. Purinton, known as the housing manager. His duties are to rent the houses, supervise the management of the Village and enforce the regulations of the Federal Public Housing Authority applicable to the project. [7] One of the general regulations promulgated by the Agency, which he was required to enforce, prohibits soliciting, peddling and hawking of any kind from door to door within the Village without permission of the manager. [7, 10, 12-13] Appellant, Arthur Tucker, is an ordained minister of the gospel, one of Jehovah's witnesses, engaged in preaching as a missionary evangelist from door to door. [19, 20, 21, 24, 28] He was ordained in June 1940. [21] At this time he dedicated and consecrated his entire life to serve Almighty God as His missionary evangelist. [21] He has received special training for missionary evangelistic work at the Watchtower Bible College of Gilead in New York State. [22, 30]

He was transferred from Michigan to Texas to continue the pursuit of his missionary evangelistic activity in August

1943. [20] In due course he was assigned to Hondo, Texas. [20] His missionary field at this place included the Hondo Navigation Village. [20, 22] In the latter part of September 1944, he began his missionary work by calling from door to door in the Village. [22] He called on the manager of the Village and informed Purinton that he was a minister, calling from door to door, explaining to persons willing to listen to him the full nature of his good work, offering to the people literature and Bible helps for the purpose of assisting them in systematically studying the Scriptures concerning the establishment of God's Kingdom. [13-14; 22-23] The manager informed Tucker that he could not go from door to door in Hondo Navigation Village. [14, 23] Tucker left but returned to the Village two or three days later. [14] When the manager found out that Tucker was going from door to door he sent someone to tell Tucker to quit preaching. [14-15] Tucker did not stop. [15] On a later date Tucker returned to the Village. While calling from house to house he came upon the home occupied by the manager, Mr. Purinton. [15] Although he had previously learned that Purinton was not interested, he did not know that the house was occupied by the manager of the project. [23-24] Then Purinton told him that he would have to leave the Village and never return. [15, 24] Before appellant left, Purinton asked him for a booklet, for which he contributed five cents. [15, 24] Purinton did not obtain the booklet in good faith for the purpose of reading, but solely for the purpose of obtaining evidence. [15, 24] Appellant did not refuse to leave Purinton's home [16] but left as soon as he was told to. [16, 24] Appellant did not refuse to leave any house when requested to do so. There was no complaint that he trespassed at any persons' homes after being informed that they were not interested. [16, 23]

D. C. Williams, a deputy sheriff, came to the Village at the request of Manager Purinton. [18] The deputy was requested to ask appellant to leave the Village and not go from door to door. He did. Appellant refused to leave. [18]

Then the deputy returned with a warrant for his arrest. With Purinton he talked to appellant again requesting him to leave. Appellant informed him that he had as much right as anyone else to remain there in the Village. [18] He refused to leave the Village. [24] At no time did he create a disturbance. [25] He did not refuse to leave the home of any tenant after being requested to leave. [25] He stated that the reason he did not leave the Village was that he, as a minister, was "always guided by the scriptures which commands work to be done, not in obedience to man, but in obedience to Almighty God. This good gospel of the kingdom must be preached to all creatures possible and it is left up to the creature to decide and Almighty God what he wishes to do about it. Therefore, in any locality where there are people residing they have the right to accept or reject visitors at their homes. Some hear this good message that I preach because the Lord is now dividing the people as sheep from goats and it is necessary that the person hear the message of the gospel in order to place himself in one group or the other. . . . I was preaching to the people of good-will who cared to hear; I was delivering to them the message without charge concerning the establishment of the kingdom of God and inquiring of their interest so that I might call again some other day and sit down with them in their homes and discuss the scriptures and invite them to study the Bible systematically." [25-26]

HOW ISSUES RAISED

At the close of the State's case appellant filed and urged his motion to dismiss. [2-3, 19] At the close of all the evidence appellant urged his second motion to dismiss. [3-4, 29] In this motion he asserted that he was an ordained minister of Jehovah God, that the undisputed evidence showed that at the time in question he was engaged in preaching the gospel of God's Kingdom and that if the statutes were construed and applied so as to permit a conviction they would unlawfully abridge and deny his right

of "worship, speech and press, contrary to the First and Fourteenth Amendments to the United States Constitution." [3-4, 29] The motion was overruled, to which exception was allowed. [4, 29] In the motion for new trial appellant duly complained of the action of the court below in overruling his second motion for dismissal and for judgment. He also complained that the judgment of conviction was contrary to the law and evidence. [4-5] This motion was overruled with exception to appellant. [5]

Specifications of Error

1. The court below erred in overruling appellant's second motion to dismiss. [3-4, 29]

2. The court below erred in overruling appellant's first amended motion for new trial. [4-5]

[Points for JOINT ARGUMENT of *Tucker* and *Marsh* cases appear at pages 20-21, infra.]

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1945

■

No. 114

GRACE MARSH, *Appellant*

v.

THE STATE OF ALABAMA, *Appellee*

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF ALABAMA

■

Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code or 28 U. S. C. 344 (a).

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statute could be received as a matter of right on writ of error.

The papers upon appeal to this court were duly filed in the court below on May 3, 1945. [157-161] The order allowing appeal was entered on May 3, 1945. [161-163]

Opinion

The opinion of the Court of Appeals of Alabama is reported. (21 S. 2d 558) This opinion also appears in the record. [141-150] It is an appendix to the jurisdictional statement. [37-46] No opinion was filed by the Supreme Court of Alabama in its denial of certiorari. The decision denying certiorari appears in the record. [156] (21 S. 2d 564)

Statute and Regulation Involved

The legislation the constitutionality and validity of which is here drawn in question is the so-called "trespass after warning" statute * which provides:

"TRESPASS AFTER WARNING. Any person, who, without legal cause or good excuse, enters into the dwelling house or on the premises of another, after having been warned, within six months preceding, not to do so, . . . and fails or refuses, without legal cause or good excuse, to leave immediately on being ordered or requested to do so by the person in possession, his agent or representative, shall upon conviction be fined not more than one hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than three months."

Also drawn in question is a rule promulgated by the Gulf Shipbuilding Corporation for the Town of Chickasaw, Alabama, which it owns, prohibiting peddlers, solicitors and hawkers from plying their trade within the limits of said town without permission of the housing manager of the town. See the record. [47, 49, 87]

Constitutional Provisions Involved

The First Amendment to the Federal Constitution guaranteeing freedom of speech, press and worship, and the Fourteenth Amendment securing due process of law and the rights guaranteed by the First Amendment are here involved.

How Statute and Regulation Construed Below

Chapter 79, Section 426 of the Alabama Code was construed by the Alabama Court of Appeals so as to furnish criminal sanctions for violation of the rule of the Gulf Shipbuilding Corporation prohibiting peddling, soliciting

* Chapter 79, Article 426 of the Alabama Code.

and hawking within the limits of Chickasaw, Alabama, without the prior permission of the housing manager. The code provision was not restricted so as to give protection to individual property owners troubled by trespassers who, having been previously warned, refused to leave when ordered so to do, but was broadly construed so as to enable the manager of the town to absolutely prohibit appellant and others similarly situated from distributing their Bible literature to persons passing along the streets and sidewalks owned by the Gulf Shipbuilding Corporation, without the prior permission of the housing manager.

The Court of Appeals of Alabama, the highest court of Alabama in which a decision was had, held that the statute was valid and constitutional and that it did not abridge appellant's rights of free speech, free press and her freedom to worship ALMIGHTY GOD according to His written commands contained in the Bible and according to appellant's conscience. That court of last resort sustained the application of the statute to appellant and decided in favor of the validity of same under the Federal Constitution and held that it was constitutional on its face and as construed and applied.

Questions Presented

1. Does the conceded use of the streets of Chickasaw for ordinary purposes give appellant the right to claim that the Town of Chickasaw and the Gulf Shipbuilding Corporation are bound by the same constitutional restrictions against infringement of civil liberties exercised on the streets as are imposed against all municipalities?

2. Does the representative of the landlord of the Gulf Shipbuilding Corporation have the power to censor and prohibit evangelistic preaching activity upon the public streets in the Town of Chickasaw, a suburb of the City of Mobile?

3. Does the conviction of appellant under the Alabama

trespass statute because she did not have a permit and refused to leave the streets of the Town when ordered by the manager of the Gulf Shipbuilding Corporation deprive her of her freedoms of speech and press and to worship ALMIGHTY GOD, contrary to the First and Fourteenth Amendments to the United States Constitution?

Form of Action and History

Complaint charging appellant with trespass was filed in the Inferior Criminal Court of Mobile County. [1] Appellant was convicted. [2] She appealed to the Circuit Court of Mobile County where she received trial *de novo*. [3-6] After her hearing in the Circuit Court of Mobile County appellant was found guilty. A judgment of conviction was entered on January 27, 1944. [8-9] Appellant duly appealed to the Court of Appeals of Alabama. [9] That court affirmed on January 9, 1945. [9] The petition for rehearing in that court was denied February 13, 1945. [153] Petition for writ of certiorari was denied by the Supreme Court of Alabama on March 29, 1945, without entering an order of affirmance. [156] (21 S. 2d 564)

FACTS

Chickasaw, Alabama, a suburb of the City of Mobile, is a town having a population of 1530.* Due to expansion of its shipbuilding industries during the war the population of the town greatly increased. [25] The town had its genesis during the first world war. [74, 80, 82] Before the town began to develop it was owned by the Tennessee Land Company. [82] In 1921 the company erected a building housing a group of stores in a portion of the town. [82-83] This portion of the town constitutes what is known as the "business block". [44-45, 57, 74] This "business block" fronts on a street 200 or 250 feet in length, running parallel with an adjacent public highway. [28, 44, 45, 82, 83] Both ends

* See 1940 United States Census.

of this street were connected with this highway so that the street formed a crescent-like detour from the main road for the convenience of shoppers in the business center. [26, 28, 46, 53, 65] The buildings were only 30 or 40 feet off the highway, and the street was separated from the pavement of the highway by only a narrow strip of dirt. [24, 28, 45, 52, 53, 83]* All the stores on the "business block" are located in one building fronting on this street. [45, 53, 74, 82, 83] A concrete sidewalk lay in front of the stores the entire length of the building. [24, 51, 52, 65, 78, 80, 86] It was there twenty-three years. [50-51] The "business block" is arranged to accommodate a barber shop, beauty parlor, laundry branch, doctor's office, commercial office, dry goods store and restaurant. [22, 23, 26, 29, 45, 68] A separate building adjacent to the main building provides quarters for a post office. [29, 45, 51, 79, 80, 83] The stores were leased out to tenants who conducted their respective businesses in the customary and usual manner for general public patronage. [53, 56, 81, 88] The post office served not only the people living on the company-owned land, but also all the surrounding area. [55, 80-81] There was no visible mark of any kind that would indicate the boundary of the company-owned property and adjoining property otherwise owned. [25, 56, 65, 76] The town was not fenced in or walled in. [29]

In 1941 the Tennessee Land Company, after running the town for twenty years, sold its property, including the "business block", to the Chickasaw Development Company, which in turn was shortly absorbed by the Gulf Shipbuilding Corporation, the present owner. [20, 32-33, 82] In December 1943, a barber shop, drug store, beauty parlor, laundry, post office, grocery store, doctor's office and commercial office were operating in the "business block" under leases from the Gulf Shipbuilding Corporation and doing business

* The distance of this "business block" from the public highway is approximately the same as the ordinary group of stores abutting a highway with their usual "drive-in" commonly seen along the major highways of the nation.

with the general public. [44-45, 82, 83] The Gulf Shipbuilding Corporation ran the town and provided the inhabitants with the usual municipal conveniences. [11, 32, 33] A sewer and water system was maintained. [40, 42] Deputy sheriffs were maintained to police and look out for the welfare of the Corporation and the people of Chickasaw. [11, 46-47, 89]

Although the present and former owners of the "business block" declared there had never been a formal and express dedication of the streets and sidewalks to public use [46, 86], they had been used in the general and ordinary manner that all public streets and sidewalks of every community are used. [24, 51, 52, 65, 68, 74, 78, 80, 86] The owners have always paid taxes on the property to which they hold title, including the streets and sidewalks. [46, 86] The corporation claimed control of sidewalks. [87; cf. 88] The implicit grant of the public easement on the streets and sidewalks was recognized by the former owner in its deed to the Gulf Shipbuilding Corporation. In that deed it was provided that the warranties did "not apply to the areas or property located in any of the streets, alleys or public roads nor to the sewer line extending between the Main Village and the East Village of Chickasaw". [42] The testimony of the law enforcement officer for the Gulf Shipbuilding Corporation and the Town of Chickasaw emphasizes the public easement upon the sidewalks and streets:

> "Q. Has that sidewalk been continuously used by the general public during all of those twelve years you have lived there? A. Yes sir.
>
> "Q. Are these the first people that have been arrested there offering a magazine or paper on the sidewalk? A. The first ones that I have arrested, yes sir.
>
> "Q. Have you known of any others to be arrested there for that? A. No sir.
>
> • • •
>
> "Q. This sidewalk is used you say by the general

public, that is similar to the use that is put to in any small town of that size, is it not? A. Yes sir, the general public use it." [24]

This was confirmed by the Tennessee Land Company's manager, William C. Myles, who went even further and agreed that while he had title to the property, he 'never stopped anybody from using it so long as they used it in an orderly and proper manner and were not on there for any gainful purpose.' [90; see also 86]

Appellant Grace Marsh since 1934 has been an ordained minister of ALMIGHTY GOD, and as such is one of Jehovah's witnesses preaching the gospel of the Kingdom of God. [61, 64, 68] The Watchtower Bible and Tract Society, under direction of which she carried forward her ministerial activities, issued to her a certificate of ordination and identification. (Defendant's Exhibit 3) [69-71] Appellant testified that Jehovah's witnesses are true followers of Christ Jesus and are dedicated to the promulgation of His teachings among the people of good will toward ALMIGHTY GOD. This is done in the apostolic manner as shown in the Scriptures. Jesus taught in the villages, calling on various people. (Mark 6:6) He went throughout every city and village, preaching and explaining the message of God's Kingdom, together with His twelve disciples. (Luke 8:1) After thus instructing by example, He directed His disciples to likewise act and preach: "Go ye into all the world, and preach the gospel to every creature." (Mark 16:15) In harmony with this directive from the Master and himself also setting an example of "instruction in righteousness", His apostle Paul reminded the Christian church that he had taught publicly and from house to house. (Acts 20:20) Appellant said that she devoted her entire life to this work. [61] In addition to orally teaching the people concerning the Kingdom of God, she used various printed publications, such as books, booklets [70-71], and magazines. [61, 62, 70] Such she distributed to "any person of good-will who desires to

read them." [62] To the end that this may be accomplished in an orderly manner, the City of Mobile and surrounding communities had been divided up by Jehovah's witnesses into territory sections, and each minister given a section to serve.

Grace Marsh and others of Jehovah's witnesses had been engaged in preaching the gospel in Chickasaw by distribution of Bible literature. [30-31, 62] It was their weekly custom to distribute the "Watchtower" and "Consolation" magazines (Defendant's Exhibits 1 and 2, respectively) upon the sidewalks in front of the "business block" on each Saturday afternoon. [64, 66] * Appellant and her companions distributed this literature while standing on the outer edge of the sidewalk near the curb of the street. As the pedestrians passed by them they displayed the magazines calling out in moderate tones, "Watchtower, announcing Jehovah's Kingdom". [61, 62, 67] The magazines were not for sale. None were sold. They were offered to anyone who desired to read and study them. The recipients of the magazines were given an opportunity to contribute a small sum to further such charitable work. If any were too poor or otherwise unable to contribute and desired the magazines they were given to such persons without any money contribution. [62, 67]

The "Watchtower" and "Consolation" magazines expound true Christianity. They contain scriptural sermons on topics of great concern to people of good-will seeking knowledge of God's purposes toward mankind. [126-140] The "Consolation" magazine augments these laudable purposes by providing uncensored news items gathered from all over the earth relevant to God's purposes to set up a government of righteousness on the earth which will bring to the people peace, prosperity, happiness and everlasting life. [94-125] This literature was used by appellant and her companions to further their preaching. [61-62] The

* Peebles, the Town manager, denied ever having seen Jehovah's witnesses distribute literature until one week before their arrest, [54]

magazines were a substitute for oral discussion upon the various vital subjects dealt with. [62, 126-140]

On December 11, 1943, appellant and a companion were on the sidewalk in front of the "business block" distributing the magazines in the manner and for the purposes above described. [15, 18, 48, 58, 62, 63, 64] While engaged in this pursuit, Deputy Sheriff Chatham, employed by the Gulf Shipbuilding Corporation, arrested appellant and her companion. They were taken to the office of the Gulf Shipbuilding Corporation where they were held for one or two hours. [12, 18, 58, 62, 63] The arrest was made on the order of Mr. Peebles, vice-president of the Gulf Shipbuilding Corporation and manager of the Town of Chickasaw. He instructed the deputy sheriff to forcibly remove Jehovah's witnesses from the "business block" at any time they were found on the street or sidewalk. [12, 17, 19, 26, 54] Appellant, after released, was warned not to again distribute magazines on the sidewalk in front of the "business block" in Chickasaw. [12, 18, 58, 62, 63]

The arrest of appellant and the threat of future arrest if she continued such activity in the "business block" was based on a custom of the operators of Chickasaw, which was of many years standing, requiring peddlers, solicitors and hawkers to obtain prior permission before selling merchandise on the streets or sidewalks in front of the "business block". [47, 87] * The Gulf Shipbuilding Corporation continued to enforce this regulation after the property was acquired from the Tennessee Land Company. [48, 87] The corporation about two weeks before the arrests caused a notice to be posted in the windows of the stores fronting on the "business block" of Chickasaw. [14, 22, 47, 53] The notice reads:

* Compare undisputed evidence that newspapers were sold only with permits. [25, 30, 65]

NOTICE

This is private property, and without written permission, no street, or house vendor, agent or solicition or any kind will be permitted.

Gulf Shipbuilding Corporation
Housing Division

[13, 22, 41, 49, 53]

Appellant, on December 18, 1943, together with others of Jehovah's witnesses, again appeared on the sidewalks of the "business block" distributing the magazines in the manner above described. They were forthwith arrested and taken to the Mobile County Jail where they were incarcerated. However, after some discussion and further warnings appellant and her companion were released without charges being made. [12, 18, 58, 62, 63, 67]

A few days later Grace Marsh called at Manager Peebles' office for the purpose of straightening out their differences. [48, 58, 63] She explained that she and her companions were ordained ministers, Jehovah's witnesses, preaching the gospel of God's Kingdom. [58] Peebles was informed that Jehovah's witnesses were engaged in a charitable Christian work. She offered him sample copies of the magazines being distributed. Peebles was told that the faithful continuance of their preaching in this manner in Chickasaw meant to them everlasting life. He was advised that the law of the land guaranteed the right to distribute the literature upon the streets of Chickasaw. [48, 58, 63] The manager stated that, regardless of their understanding of the law, Jehovah's witnesses would have to obtain a permit to carry on such work, but that he was not willing to issue such a permit. [48, 58] Finally he specifically warned them again not to come upon the streets any more. [48]

On December 24, 1943, appellant and two of her companions appeared with their magazines on the sidewalk in front of the "business block". [12, 19, 31, 61, 62, 68] One

stood in the center of the block and each of the others stood at the ends of the block. [12, 14, 61, 63, 64] The company police officer again told them that they could not carry on their work without a permit. [12, 64] He called their attention to the notice posted in the shop windows. [14, 64, 66] Thereupon appellant informed him that "we were ordained ministers and that was the right granted to us by the Constitution; we were commanded by Almighty God to do this and we couldn't ask man for permits to do this work; we were not peddlers and we were not soliciting for anything, we were simply there carrying on our Christian educational work in an orderly manner." [14, 64, 68]

The officer then placed them under arrest, put them in his car and started toward the police station. However, he circled the block before going to the station. As he came back around he found that three others had taken the place on the street of those he had just arrested, so he stopped and took them into custody also. [14-15] The group was then taken to the Sheriff's office in Mobile where charges of "trespass after warning" were placed against them.

HOW ISSUES RAISED

In the Circuit Court appellant duly presented her motion to dismiss claiming that if the statute was applied to the facts and circumstances of the case that it would become unconstitutional because it would abridge her rights of freedom of speech, press and worship of Almighty God, contrary to the First and Fourteenth Amendments. [91] The motion was denied with exception to appellant. [91] In due time and manner the Court of Appeals of Alabama was requested to reverse the judgment of conviction, whereby appellant was committed, because of the aforesaid abridgment of her said constitutional rights. [141] The Court of Appeals of Alabama construed said contention by overruling it. [141-150] (See jurisdictional statement, pages 44-46) The error of said court was called to the attention of the court in a motion for rehearing duly filed, which motion was

denied. [150-152, 153] Appellant then timely filed a petition for writ of certiorari in the Supreme Court of Alabama praying that the writ issue and that the judgments be reviewed and reversed. [153-156] Appellant, by such petition, claimed that the statute as construed and applied deprived her of freedom of speech, press and worship, contrary to the First and Fourteenth Amendments to the United States Constitution. [153-156] The Supreme Court of Alabama, on March 29, 1945, denied certiorari. (21 S. 2d 564) [156]

Specifications of Error

1. The trial court erred in overruling appellant's motion to dismiss. [91]

2. The Court of Appeals of Alabama erred in overruling appellant's assignments of error and in affirming the judgment of the trial court. [141-150]

Points for Joint Argument

ONE

The law extends an implied invitation to Arthur Tucker in behalf of the residents of the Hondo Navigation Village permitting him to call from door to door, which cannot be revoked by the manager.

TWO

Grace Marsh has the right to use the sidewalk and street of the "business block" in Chickasaw, Alabama, for the purpose of distributing Bible literature regardless of the private ownership and title vested in the Gulf Shipbuilding Corporation.

THREE

By assuming to manage and operate the Town of Chickasaw, the Gulf Shipbuilding Corporation stands in relation to the people of Chickasaw as a quasi-municipal corporation, and is subject to the same constitutional restraints prohibiting abridgment of civil rights by an ordinary municipal corporation.

FOUR

The Bible literature distribution activities of Jehovah's witnesses in both cases are proper preaching and worship protected by the Constitution.

FIVE

The convictions of appellants, respectively under the Texas and Alabama statutes, because of their refusal to discontinue preaching gives criminal sanctions to the regulations of private persons owning the properties, thus abridging the appellants' rights of freedom of speech, press and worship contrary to the First and Fourteenth Amendments to the United States Constitution.

JOINT ARGUMENT

ONE

The law extends an implied invitation to Arthur Tucker in behalf of the residents of the Hondo Navigation Village permitting him to call from door to door, which cannot be revoked by the manager.

From time immemorial it has been customary for persons not expressly invited to go from door to door and summon residents to the door for the purpose of disseminating ideas on political, Biblical and other subjects or to invite them to attend meetings where such subjects are discussed. *Martin* v. *Struthers,* 319 U. S. 141. This method of dissemination of ideas has long been employed by religious organizations. *Martin* v. *Struthers,* 319 U. S. 141, at page 145. This court has said that "pamphlets have proved the most effective instruments in the dissemination of opinion. And perhaps the most effective way of bringing them to the notice of individuals is their distribution at the homes of the people." *Schneider* v. *State,* 308 U. S. 147, 164. In *Mount Sterling* v. *Donaldson Baking Co.,* 287 Ky. 781, 155 S. W. 2d 237, it was said that "where a householder does not exter-

nally manifest in some way his desire not to be molested by solicitors, the latter may take custom and usage as implying consent to call." See also *Prior* v. *White*, 132 Fla. 1, 180 S. 347, where it is said, "It has been held that a license may be implied to enter the house of another at usual and reasonable hours, and in a customary manner, for any of the common purposes of life." Accord *Lakin* v. *Ames*, 64 Mass. 198, 220, and cases there cited.*

The right extends not only to the popular cause but to the unpopular cause. It is not confined to visitations at only such homes that the caller has reason to believe he is welcome, but the law extends the right to every person to call at every home to ascertain whether the householder has an interest in the literature distributed. *Martin* v. *Struthers*, 319 U. S. 141, 145-148. The right does not authorize one to call at a home or insist on staying where he has been informed by the householder he is not wanted. The right to determine who shall visit residents of homes located in Hondo Navigation Village is confined to each individual householder. The landlord or its manager does not have the right to say who shall or who shall not visit the tenants.

The implied invitation to visit at the homes of the people is one unaffected by the fact that the homes are occupied by tenants rather than the owner. In renting property the landlord demises the uninterrupted use of the property to the tenant in the absence of an express agreement to the contrary. Thus it has been held that uninvited callers of

* Laws which arbitrarily punish one for calling from house to house without previous express invitation of the householder have uniformly been declared unconstitutional. *City of Orangeburg* v. *Farmer*, 181 S. C. 143, 186 S. E. 783; *City of Columbia* v. *Alexander*, 119 S. E. 241; *Real Silk Hosiery Mills* v. *City of Richmond, Calif.*, 298 F. 126; *Ex parte Maynard*, 275 S. W. 1071; *Jewel Tea Co.* v. *Town of Bel Air*, 172 Md. 536, 192 A. 417; *White* v. *Town of Culpeper*, 172 Va. 630, 1 S. E. 2d 269; *New Jersey Good Humor, Inc.* v. *Board of Comm'rs*, 11 A. 2d 113, 114; *City of McAlester* v. *Grand Union Tea Co.*, 98 P. 2d 924; *De Berry* v. *La Grange*, 62 Ga. App. 74, 8 S. E. 2d 147; *Jewel Tea Co.* v. *Geneva, Nebr.*, 291 N. W. 664; *Zimmermann* v. *London*, 38 F. Supp. 582.

tenants in an apartment house are not trespassers. *Duff* v. *Eickler*, 336 Mo. 1164, 82 S. W. 2d 881; *Fogarty* v. *Bogart*, 59 App. Div. 114, 116, 69 N. Y. S. 47; *Mitchell* v. *Georgia*, 12 Ga. App. 557, 77 S. E. 889.*

It has been said that a landlord impliedly grants to the tenant the rights of ingress and egress. Moreover, in an apartment the landlord cannot "object to the free use of the bell and knocker, halls, staircase or the passageways or any of the necessary adjuncts of his furnished apartments unless it be otherwise stipulated at the time of the taking of the apartments. . . . Not only is the lessor himself entitled to egress and ingress, but so are those who visit him. . . . The use of the apartments and dwellings necessitates the use of the passage by tradesmen in delivering goods, by persons having other business with the occupants, and by those who visit him for social purposes. . . ."

Nor has the landlord the right to select the visitors, or the tradesmen, or the tradesmen's servants, so long, at least, as they are decent in character and behavior. The tenant is at liberty to receive whom he pleases and engage any tradesmen or deal with any merchant at his pleasure." *Williams* v. *Lubbering*, 73 N. J. L. 317, 63 A. 90.

That the Hondo Navigation Village was a defense housing project does not change the rule. The mere fact that many residents of the Village engaged in night work and slept during the day does not give the manager of the Village the right to censor or prohibit Tucker's calling from door to door in the Village. In *Martin* v. *Struthers* (319 U. S. 141, 144) it was argued by the City of Struthers that because many of its residents were defense workers sleeping during the day it could prohibit "bell pushers" from calling at the homes of the people. This argument was held not to be substantial enough to justify the abridgment of the right

* See also *Goldstein* v. *Healy*, 187 Cal. 296, 201 P. 462, 464; *Williams* v. *Mayer*, 4 S. 2d 71, 72; *Montgomery* v. *Virginia*, 99 Va. 833, 37 S. E. 841; *Suggs* v. *Anderson*, 12 Ga. 461.

of freedom of speech, press and worship. (319 U. S. 141, 145, 147)

The action of the manager of the Village in invoking the Federal Public Housing Authority regulations against peddlers and solicitors calling from door to door without a permit was not a "reasonable standard of safety, convenience and health." (42 U. S. C. 1548, 54 Stat. 1128, 55 Stat. 363)

The regulation relied upon by the manager was referred to in the evidence. It was generally described. However, the specific provision of this regulation can be judicially noticed. *Bowles* v. *United States,* 319 U. S. 33, 35.

A reasonable construction and application of this regulation of the Federal Public Housing Authority promulgated pursuant to the Code (42 U. S. C. 1548) requires that it be construed so as to exclude therefrom the charitable preaching activity of Jehovah's witnesses. The courts have uniformly held that the activity of Jehovah's witnesses does not constitute peddling, hawking or soliciting.* A construction so as to exclude from the ambit of this regulation is made necessary by reason of 42 U. S. C. 1547 which provides, *inter alia,* "Notwithstanding any other provision of

* *New Hampshire* v. *Richardson,* 92 N. H. 178, 27 A. 2d 94; *New Hampshire* v. *Chouinard,* 92 N. H. 239, 29 A. 2d 120; *Semansky* v. *Stark,* 196 La. 307, 199 S. 129; *Shreveport* v. *Teague,* 200 La. 679, 8 S. 2d 640; *State* v. *Meredith,* 197 S. C. 351, 15 S. E. 2d 678; *State* v. *Mead,* 230 Iowa 1217, 300 N. W. 523; *Thomas* v. *City of Atlanta,* 59 Ga. App. 520, 1 S. E. 2d 598; *Cincinnati* v. *Mosier,* 61 Ohio App. 81, 22 N. E. 2d 418; *Commonwealth* v. *Akmakjian,* 316 Mass. 97, 55 N. E. 2d 6; *New York* v. *Barber,* 289 N. Y. 378, 46 N. E. 2d 329; *New York* v. *Gage,* 98 N. Y. S. 2d 817; *South Holland* v. *Stein,* 373 Ill. 472, 26 N. E. 2d 868; *State ex rel. Hough* v. *Woodruff,* 147 Fla. 299, 2 S. 2d 577; *Reid* v. *Brookville,* 39 F. Supp. 30; *Donley* v. *Colorado Springs,* 40 F. Supp. 15; *State ex rel. Wilson* v. *Russell,* 146 Fla. 539, 1 S. 2d 569; *State* v. *Greaves,* 112 Vt. 222, 22 A. 2d 497; *Blue Island* v. *Kozul,* 379 Ill. 511, 41 N. E. 2d 515; *Commonwealth* v. *Reid,* 144 Pa. S. C. 569, 20 A. 2d 841; *McConkey* v. *Fredericksburg,* 179 Va. 556, 19 S. E. 2d 682; *Ex parte Stevenson,* 145 Tex. Cr. R. 450, 169 S. W. 2d 175; *Seevers* v. *Somerset,* 295 Ky. 595, 175 S. W. 2d 18.

law, the acquisition by the Administrator of any real property pursuant to subchapters II-IV shall not . . . impair the civil rights under the State or local law of the inhabitants on such property." (54 Stat. 1128, 55 Stat. 363, 56 Stat. 212) * This section of the Code purports to protect the civil rights under state laws. A reasonable construction of the provision requires that the civil rights guaranteed by the Federal Constitution likewise cannot be curtailed.

This court is not bound by the conclusion of state courts that Jehovah's witnesses are engaged in peddling and hawking. *Murdock* v. *Commonwealth of Pennsylvania*, 319 U. S. 105, 111-112; *Follett* v. *Town of McCormick*, 321 U. S. 573, 576-577; *Hooven & Allison Co.* v. *Evatt*, 65 S. Ct. 870, 874; *Sterling* v. *Constantin*, 287 U. S. 378, 398.

It has been held that the refusal of one of Jehovah's witnesses, engaged in door-to-door calling upon tenants of an apartment house who has not specifically invited him, to leave the apartment house when ordered to do so by the landlord does not constitute trespass. *Massachusetts* v. *Richardson*, 313 Mass. 632, 48 N. E. 2d 678. Cf. *Minnesota* v. *Korich*, 17 N. W. 2d 497.** It has been held that one who uses the private way of leased premises, contrary to the wishes of a landlord claiming control over the way, is not guilty of trespass. *Pennsylvania* v. *Burford*, 38 Pa. Super. 201, 207; see also *Alabama Fuel & Iron Co.* v. *Courson*, 212 Ala. 573, 103 S. 667.

* This section of the Code has been resorted to for the purpose of invalidating local regulations prohibiting residents on such projects from exercising their right of suffrage. *Johnson* v. *Morrill* (Calif.) 126 P. 2d 873; *State ex rel. Parker* v. *Corcoran* (Kans.) 128 P. 2d 999.

** In this case it was held that similar conduct did not constitute disorderly conduct and breach of the peace within the meaning of the ordinance of the City of Minneapolis.

TWO

Grace Marsh has the right to use the sidewalk and street of the "business block" in Chickasaw, Alabama, for the purpose of distributing Bible literature regardless of the private ownership and title vested in the Gulf Shipbuilding Corporation.

Chickasaw is a thriving little village. It has grown up to become one of the suburbs of the City of Mobile. The small "business block" is the center of all business activity in the town. The record reveals that the road and sidewalk used by appellant have been laid out and used in the present form by the general public for a period of more than 23 years. [50-51, 82, 90]

The Court of Appeals of Alabama has impliedly held that there was no dedication of the street so as to constitute it a public street withdrawing the control of the same from the Gulf Shipbuilding Corporation. This is a question the decision of which rests finally with the state courts as far as the law of dedication and acceptance by user is concerned.* However, the right to use the streets of a town for the purpose of disseminating information and opinion does not depend on a technical dedication and formal acceptance by the public expressly or impliedly. Therefore the finality of these decisions in no way limits the rights of appellant before this court. The payment of taxes by the owner does not diminish the rights of the public to use the streets for these purposes as long as they are open and used as avenues of travel. In towns operated by municipal corporations under the common law the title to the streets

* However, it should be observed that the holding of the courts below in the circumstances of this case is in conflict with other decisions of the Alabama courts. Cf. *Beverly* v. *State*, 28 Ala. App. 451, 452, 185 S. 768; *Locklin* v. *Tucker*, 208 Ala. 155, 93 S. 896; *Still* v. *Lovelady*, 218 Ala. 19, 20, 117 S. 481; *Ft. Payne Co.* v. *Ft. Payne*, 216 Ala. 679, 114 S. 63; *Trammell* v. *Bradford*, 198 Ala. 513, 73 S. 894, 895, 896; *Leeds* v. *Sharp*, 218 Ala. 403, 404, 118 S. 572.

and sidewalks vested in the abutting owners with the boundary running down the middle of the street. *Cloverdale Homes* v. *Cloverdale*, 182 Ala. 419, 62 S. 712; *McCranery* v. *City of Leeds*, 239 Ala. 143, 194 S. 151; *Thorndike* v. *Milwaukee Auditorium Co.*, 143 Wis. 1, 126 N. W. 881, 886. Cf. *Birmingham Mineral R. Co.* v. *Bessemer*, 98 Ala. 274, 13 S. 487.

The Gulf Shipbuilding Corporation has not built a wall around the town. It is not a town surrounded by a moat to keep out an enemy. It does not maintain a closed gate at the entrance to the town. From all outward appearances it is the same as any other small suburb of Mobile. Its streets and sidewalks are used in the same manner and for the same purposes as are the streets and sidewalks of other towns. Thus all, including strangers, are welcome to use these facilities as in any other town.

The "business block" of Chickasaw is connected with the public highway. In fact the short crescent-like road that connects the street where the "business block" is located is a mere "drive-in" from the public highway. Travelers proceeding along the public highway are impliedly invited to enter the "business block" and shop as in any other shopping district. Under the facts and circumstances the public have a public easement to enter upon the street and to walk upon the sidewalk for all legitimate purposes.

Certainly a traveler or one desiring to use the thoroughfare and arteries for proper and lawful purposes does not surrender any of his rights by turning off the public highway a few feet and entering the street in front of the "business block" of Chickasaw. In fact, the deputy sheriff testified it would be impossible for one not intimately familiar with the community to tell when he entered upon private property. [25] The Gulf Shipbuilding Corporation cannot be heard to say the public does not have any rights upon the street and sidewalk in front of the "business block". Indeed it is estopped to deny the easement for use of the street and sidewalk by the public for ordinary purposes.

"A traveler on a highway, open for the purpose, has no occasion to inquire over whose land the road lies, nor to give notice of his claim of right to use it. The continuous user by the public carries notice of its nature." *Still* v. *Lovelady*, 218 Ala. 19, 20, 117 S. 481.

"Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights and liberties of citizens." *Hague* v. *C. I. O.*, 307 U.S. 496.

In *Jamison* v. *Texas*, 318 U. S. 413, the City of Dallas argued that because under the law of Texas ownership of the streets by the municipality conferred absolute power to regulate their use, it was justified in prohibiting the distribution of handbills by Jehovah's witnesses on its streets. Accordingly it relied on *Davis* v. *Massachusetts*, 167 U. S. 43, referred to by Mr. Justice Roberts in his opinion in the *Hague* case. The decision in the *Jamison* case specifically declared that the rule in the *Davis* case was no longer the law. It was held that the ownership and the concomitant right to control of the streets under Texas law did not prevent conviction from being void and unconstitutional.

It seems that the proviso in the warranty section of the deed from the Chickasaw Development Company to the Gulf Shipbuilding Corporation whereby the warranties were exempted from the "streets, alleys or public roads" [42] indicate that title and ownership of the entire property including the streets would not confer the absolute right in their use and control to the exclusion of all other persons.

This case is analogous to *State* v. *Vincioni*, 30 N. M. 472, 480, 239 P. 281. There a peddler was convicted of trespass because of his disregard of orders to stay off of company-owned streets in a town privately owned by a company. The court said:

"In this case the owner has seen fit to build a town upon [the property] and lay out streets therein, and to lease the houses therein, upon terms implying the right of the tenants to the use of the streets, without incorporating in the contract any restriction upon such use. So doing, it has waived, or rather contracted away, the right to prohibit ordinary use of the streets by its tenants. One who is on the streets at the invitation and upon such business of the tenant as does not conflict with the restrictions of the lease is there under contract and not in violation of the statute."

There is always an invitation or license implied in the law for any person to speak to another on a matter of mutual interest. Thus, Jehovah's witnesses have an implied invitation or license to speak with the public upon the streets, sidewalks, parks, and other public places, concerning matters of public interest.

It was clearly established that appellant entered the premises with no idea of selfishly (i.e., privately) conveniencing herself or for the purpose of exploration or adventure. On the contrary, she sought *others'* welfare; her sole object was to 'comfort those who mourn' because of the abominations and great sorrow that now afflict the peoples of earth. (Isaiah 61:1-3; 2 Corinthians 1:4; Ezekiel 9:4) Therefore she was an invitee and licensee upon the sidewalks and streets of Chickasaw.

THREE

By assuming to manage and operate the Town of Chickasaw, the Gulf Shipbuilding Corporation stands in relation to the people of Chickasaw as a quasi-municipal corporation, and is subject to the same constitutional restraints prohibiting abridgment of civil rights by an ordinary municipal corporation.

The Town of Chickasaw cannot be said not to be a town. Even though it is not a municipal corporation, it is nevertheless a town as properly defined in the law. Although unincorporated it possesses the attributes of a public corporation. *Bloomfield* v. *Charter Oaks National Bank,* 121 U. S. 121; *Williams* v. *Eggleston,* 170 U. S. 304. It should be remembered that the Town of Chickasaw has a sewer and water system. It provides the inhabitants with police protection, etc. In this respect the town assumes to perform the functions ordinarily performed by a municipal corporation. All these municipal functions are done in the name of and by the authority of the Gulf Shipbuilding Corporation. The Town of Chickasaw is not a *de facto* municipal corporation. It does not possess the necessary requisites. *Coupe* v. *Valley Head,* 212 Ala. 125, 101 S. 874. Nevertheless the town is operated by the private corporation as a quasi-municipal corporation: *Ex parte Selma etc. R. Co.,* 45 Ala. 969, 6 Am. S. R. 722. Cf. *Yielding* v. *State,* 232 Ala. 292. 167 S. 580.

Under the authorities, since the Gulf Shipbuilding Corporation has undertaken to exercise functions that convert the Town of Chickasaw into a quasi-municipal corporation, it cannot be said that it is emancipated from all the usual restraints against abridgment of civil liberties placed upon ordinary municipal corporations. Regardless of who owns the streets, ordinarily used by the public for usual public purposes, the rights of the public to carry on activity protected by the First and Fourteenth Amendments cannot be abridged. *Jamison* v. *Texas,* 318 U. S. 413.

Whenever private property is used in such a manner as to be affected with a public interest, as is the street in this "business block" of the Town of Chickasaw, it ceases to be governed by the law relative to private property.

"When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created." *Munn* v. *Illinois*, 94 U. S. 113, 125-126.*

This court in announcing the foregoing principle relied upon a decision by the Supreme Court of Alabama, saying, "The Supreme Court of Alabama . . . was called upon, in 1841, to decide whether the power granted to the City of Mobile to regulate the weight and price of bread was unconstitutional, and it was contended that 'it would interfere with the right of the citizen to pursue his lawful trade or calling in the mode his judgment might dictate'; but the court said, 'there is no motive . . . for this interference on the part of the legislature with the lawful action of individuals, or the mode in which private property shall be enjoyed, unless such calling affects the public interests, or private property is employed in a manner which directly affects the body of the people. Upon this principle in this State, tavern keepers are licensed; . . . and the County Court is required, at least once a year, to settle the rates of innkeepers. Upon the same principle is founded the control which the legislature has always exercised in the establishment and regulation of mills, ferries, bridges, turnpike

* The doctrine stated in the *Munn* case was approved and restated in other decisions by the court. *Stone* v. *Wisconsin*, 94 U. S. 181, 185-186; *Adkins* v. *Children's Hospital*, 261 U. S. 525, 546; *Board of Trade of the City of Chicago et al.* v. *Olsen, United States Attorney*, 262 U. S. 1, 41. In the Chicago Board of Trade case it was said: " . . . we find no difficulty under *Munn* v. *Illinois*, 94 U. S. 113, 133, and *Stafford* v. *Wallace*, supra [285 U. S. 495] in concluding that the Chicago Board of Trade is engaged in a business affected with a public national interest and is subject to national regulation as such."

road, and other kindred subjects.' *Mobile* v. *Yuille*, 3 Ala. N. S. 140." *Munn* v. *Illinois*, 94 U. S. 113, 129.

It is submitted that even though the court may conclude that this is not a public street in the same way that a public street owned by a municipal corporation is, or that there is no public easement, it must be concluded that the property is used in such a manner as to create a public interest therein. This use is sufficient to permit the public to invoke the restraints of the First and Fourteenth Amendments to protect the exercise of their rights upon the public streets of Chickasaw. The Gulf Shipbuilding Corporation has received the benefits of operating a town and maintaining a public street in the "business block". It should be bound by law to share the detriments of the operation of a quasi-municipal corporation or property affected with a public interest.

FOUR

The Bible literature distribution activities of Jehovah's witnesses in both cases are proper preaching and worship protected by the Constitution.

That Jehovah's witnesses are engaged in preaching activity from house to house and upon the streets and, in the exercise of this activity are entitled to the protection of the First and Fourteenth Amendments guaranteeing freedom of worship, is no longer open to doubt or subject to debate. In a long line of decisions this court has consistently vindicated the rights of Jehovah's witnesses to engage in these activities.*

For additional argument as to why Jehovah's witnesses are properly engaged in preaching the gospel, see brief for

* *Lovell* v. *Griffin*, 303 U. S. 444; *Schneider* v. *State*, 308 U. S. 147; *Cantwell* v. *Connecticut*, 310 U. S. 296; *Jamison* v. *Texas*, 318 U. S. 413; *Largent* v. *Texas*, 318 U. S. 418; *Taylor, Benoit and Cummings* [3 cases] v. *Mississippi*, 319 U. S. 583; *Jones* v. *Opelika*, 319 U. S. 103, reversing 316 U. S. 584; *Murdock* v. *Commonwealth of Pennsylvania*, 319 U. S. 105; *Martin* v. *City of Struthers*, 319 U. S. 141; *Follett* v. *Town of McCormick*, 321 U. S. 573.

petitioners, *Murdock* v. *Commonwealth of Pennsylvania*, Nos. 480-487, October Term 1942, pp. 22 to 30; brief for appellant, *Cummings* v. *State of Mississippi*, No. 828, October Term 1942, pp. 34 to 44; and joint brief for petitioners, *Smith* v. *United States*, No. 66, October Term 1945, *Estep* v. *United States*, No. 292, October Term 1945, pp. 143 to 153.

Mr. Justice Murphy, in *Martin* v. *Struthers* (319 U. S. 141, at pp. 149-150) said: "Nothing enjoys a higher estate in our society than the right given by the First and Fourteenth Amendments freely to practice and proclaim one's religious convictions. Cf. *Jones* v. *Opelika*, 316 U. S. 584 at 621. The right extends to the aggressive and disputatious as well as to the meek and acquiescent. . . . Freedom of religion has a higher dignity under the Constitution than municipal or personal convenience. In these days free men have no loftier responsibility than the preservation of that freedom. A nation dedicated to that ideal will not suffer but will prosper in its observance."

FIVE

The convictions of appellants, respectively under the Texas and Alabama statutes, because of their refusal to discontinue preaching gives criminal sanctions to the regulations of private persons owning the properties, thus abridging the appellants' rights of freedom of speech, press and worship contrary to the First and Fourteenth Amendments to the United States Constitution.

Inasmuch as the undisputed evidence shows that appellants were engaged in activity protected against abridgment by the First and Fourteenth Amendments there is a presumption that the statutes as construed and applied are unconstitutional. There is no evidence that the appellants were abusing their rights in the exercise of these protected activities. They were not truculent. They were not

abusive or insulting. There is no evidence that Arthur Tucker refused to leave the premises of any householder in the Hondo Navigation Village. Indeed he testified that he had not refused to leave promptly when informed by any householder that he was not interested. Grace Marsh did not block the street or sidewalk. She did not interfere with pedestrian traffic. She did not litter the streets. No breach of the peace or other impropriety was committed by her. She was quietly and orderly preaching the gospel without interference to any person when she was arrested.

On this state of the record it cannot be presumed that circumstances existed warranting the interference with the exercise of this constitutionally protected activity. The burden of proof was upon the state in each instance to prove that grounds existed for justifying the abridgment of the exercise of these activities. In *Busey* v. *District of Columbia*, 78 App. D. C. 189, 138 F. 2d 592, the court said: "Freedom of speech, press, and religion are entitled to a preferred constitutional position because they are 'of the very essence of a scheme of ordered liberty.' (*Palko* v. *Connecticut*, 302 U. S. 319, 325) . . .

"We think we may now hold that when legislation appears on its face to affect the use of speech, press, or religion, and when its validity depends upon the existence of facts which are not proved, their existence should not be presumed; at least when their existence is hardly more probable than improbable, and particularly when proof concerning them is more readily available to the government than to the citizen. The burden of proof in such a case should be upon those who deny that these freedoms are invaded. . . . No presumption which lacks a probable basis in fact should be permitted to conceal an interference with essential freedoms."*

* "The presumption of validity which attaches in general to legislative acts is frankly reversed in the case of interferences with free speech, free press and free assembly, and for a perfectly cogent reason." *The Struggle for Judicial Supremacy*, Robert H. Jackson, (Knopf, New York, 1941) p. 285.

This court has said: "There may be narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten amendments, which are deemed equally specific when held to be embraced within the Fourteenth. See *Stromberg* v. *California*, 283 U.S. 359, 369-370; *Lovell* v. *Griffin*, 303 U.S. 444, 452."—*United States* v. *Carolene Products Co.*, 304 U.S. 144, 152. Cf. *West Virginia State Board of Education* v. *Barnette*, 319 U. S. 624, 638-640.

The undisputed evidence shows that there was *no clear and present danger* that any interest of the state or any right of private property was threatened with invasion or injury by reason of the activity of appellants. In the absence of a showing of clear and present danger of substantial evils to the community in a case where the activity is protected, as here, by the First and Fourteenth Amendments, the convictions cannot be sustained *Bridges* v. *California*, 314 U. S. 252, 262-263, 273.

The mere inconvenience of the pedestrians using the sidewalk where Grace Marsh was standing or the inconvenience of householder having to answer the knock of Arthur Tucker is not sufficient justification for the application of the statute against appellants.

"Mere legislative preferences for one rather than another means for combatting substantive evils, therefore, may well prove an inadequate foundation on which to rest regulations which are aimed at or in their operation diminish the effective exercise of rights so necessary to the maintenance of democratic institutions. It is imperative that, when the effective exercise of these rights is claimed to be abridged, the courts should 'weigh the circumstances' and 'appraise the substantiality of the reasons advanced' in support of the challenged regulations."—*Thornhill* v. *Alabama*, 310 U. S. 88. See also *Schneider* v. *State*, 308 U. S. 147, 160.

A permit is required by the Gulf Shipbuilding Corporation authorities as a condition precedent to the exercise of preaching activity of Jehovah's witnesses upon the streets of Chickasaw. A permit must be obtained from the manager of the Hondo Navigation Village pursuant to the regulation of the Federal Public Housing Authority in order to carry on house-to-house preaching activity. In both cases the managers defiantly stated that they would not grant a permit for Jehovah's witnesses to carry on their ministerial activity. The requirement of the permit as a condition precedent to the exercise of these activities is unlawful censorship contrary to the First and Fourteenth Amendments to the United States Constitution. * The use of the regulations by both managers amounts to an outright prohibition of the activity of Jehovah's witnesses. Laws prohibiting the exercise of this activity are unconstitutional. *Jamison* v. *Texas*, 318 U. S. 413. "Ordinances absolutely prohibiting the exercise of the right to disseminate information are, *a fortiori*, invalid." (*Jones* v. *Opelika*, 316 U. S. 584, 595-596.) **

The ownership and title to streets open to public use does not give the owner the right to abridge the exercise of constitutional rights thereon by other persons without the consent of the owner. Title and ownership is not the criterion. The guide in determining whether the streets can be used for these purposes is whether the streets are actually open and used by the public in the same way that other streets are used. Unless the city is walled in and the streets blocked by gates, there is nothing to warn a person that the streets of Chickasaw are not the same as the

* *Lovell* v. *Griffin*, 303 U. S. 444; *Schneider* v. *State*, 308 U. S. 147; *Cantwell* v. *Connecticut*, 310 U. S. 296; *Largent* v. *Texas*, 318 U. S. 418.

** *Hague* v. *C. I. O.*, 307 U. S. 496, 501, 518; *Schneider* v. *State*, 308 U. S. 147, 162; cf. *Ex parte Walrod*, 73 Okla. Cr. 299, 120 P. 2d 783; *Ex parte Winnett*, 73 Okla. Cr. 332, 121 P. 2d 312; *Commonwealth* v. *Anderson*, 308 Mass. 370, 32 N. E. 2d 684; *Thornhill* v. *Alabama*, 310 U. S. 88; *Carlson* v. *California*, 310 U. S. 106; *Near* v. *Minnesota*, 283 U. S. 697; *Zimmermann* v. *London*, 38 F. Supp. 582.

streets of any other community.

The fact that one may be a land owner occupying the status of a landlord does not constitute him a dictator. A landlord does not have control over the mind and conscience of the tenant occupying his property purely because he is the landlord. All citizens are equal before the law. No qualification of property can be imposed as a condition precedent to the exercise of constitutional rights. Although poor and needy, a tenant need not attorn to a landlord his constitutional rights and liberties solely because he is obligated to pay rent and does not hold the title to the property wherein he dwells.

The ownership and title to the streets is entirely immaterial. Even in the towns where the operation of the local government is in the hands of a municipal corporation, in the absence of a change by statute, the common law vested title to the sidewalks and streets in the abutting owners. *Cloverdale Homes* v. *Cloverdale*, 182 Ala. 419, 62 S. 712.

If private ownership and title to the streets and sidewalks conferred the right to regulate and censor activities guaranteed by the Constitution, as argued by the State of Alabama in this case, then such activities could be prohibited in towns operated by public municipal corporations where title to streets is in the abutting owners. In such situations the abutting owner would have the prerogative to prosecute one for trespass who defiantly used sidewalks contrary to the wishes of the owner. Thus there would be accomplished indirectly what the Constitution and this Court have said cannot be done directly. It should be remembered that the "Constitution deals with substance, not shadows. Its inhibition was levelled at the thing, not the name."—*Cummings* v. *Missouri*, 4 Wall. 277.

The Gulf Shipbuilding Corporation has no higher right and no higher control over the streets and sidewalks because it holds title thereto than do abutting owners to

streets in any other community. Even where by statute the title to the streets has been vested in a municipality and under the law of the state the municipality has absolute control over the streets, it has been held that constitutional rights cannot be impaired. *Jamison* v. *Texas*, 318 U. S. 413.

The rights of the public to the use of the streets cannot be ignored because of the right to regulate and control them. *City of Birmingham* v. *Hood-McPherson Realty Co.*, 233 Ala. 352, 172 S. 114.

The power to regulate the streets does not confer a license to abridge the rights of the public. Landlords have no greater right to order Jehovah's witnesses off the sidewalks and streets or the property rented to tenants than would they have to extrude customers of stores abutting the sidewalks and streets of the tenants using rented premises.

The argument that rights of private property ownership and title thereto giving absolute control so as to abridge the exercise of rights guaranteed by law has been rejected by this court. In *Thornhill* v. *Alabama*, 310 U. S. 88, the anti-picketing statute of Alabama was declared to be invalid both on its face and as construed and applied. The court found that the unwelcome pickets were operating on "'a private entrance for employees, and not on any public road.' One witness explained that practically all of the employees live on Company property and get their mail from a post office on Company property."

The state, in that case, made much ado about the fact that the pickets were on private property. Because of their refusal to leave private property it was contended that they were properly convicted under the anti-picketing statute. The court, in setting aside the conviction, observed in a footnote on the last page of the opinion in the *Thornhill* case that this contention was "without significance."

In *Republic Aviation Corp.* v. *National Labor Relations Board*, and *National Labor Relations Board* v. *Le Tourneau*

Co. of Georgia, 65 S. Ct. 982, 986, the Aviation Corporation had a regulation prohibiting solicitation and the Le Tourneau Company had a regulation prohibiting distribution of literature without permission from the company. In each case employees exercising their rights under the National Labor Relations Act were discharged because of their distribution of literature pertaining to labor relations between the company and employees on company-owned property, contrary to the regulations. The court in affirming the orders of the National Labor Relations Board sustaining the rights of the employees to distribute the literature on the premises of the employer attributed no significance to the fact that it was privately owned property. Indeed, it was inferred that the activity could have been carried on away from the company property as effectively as was done upon the property. The court indicated that if it was a company-owned town where the employees lived, as well as worked, the rights to distribute the literature upon the property of the employer would have been stronger. There the court said: "Neither of these is like a mining or lumber camp where the employees pass their rest as well as their work time on the employer's premises, so that union organization must proceed upon the employer's premises or be seriously handicapped."

Rights of employees under the National Labor Relations Act are sufficient to justify an overruling of the rights of private property of the employer in efforts to prohibit the distribution of literature. *A fortiori*, the strong and preferred rights of the citizen secured by the First and Fourteenth Amendments are likewise sufficiently strong to overcome any rights of property in the circumstances detailed in the cases at bar. If private property was of no significance in the above cited cases, then by force of the same reason the ownership and title to the properties in question are immaterial.

For many years in this country some communities have

been owned by one single enterprise. Every house and place of business in such places is usually rented from the central enterprise operating the town. Usually a gigantic mining or industrial concern is so situated that the housing facilities are inadequate. Such industries, in order to relieve the housing shortage and to facilitate a ready force of laborers, house their laborers in company-owned houses. Frequently these company-owned communities are quite large. Throughout many parts of the United States there are scores of mining towns. Many are privately owned towns under control and supervision of mining companies.

In this postwar era there is a growing tendency of gigantic private corporations and governmental agencies to buy up large sections of property, within or without a city, for redevelopment. On such properties they erect whole communities and towns. The properties are not sold. In such communities all store space and homes are rented to the tenants. *

If the position of the appellees in these cases be sustained, that private property confers the right to censor and prohibit the exercise of civil rights thereon, then a formidable weapon designed to defeat the very purpose of the Constitution has been forged. There is no end to which that engine can drag the people were it approved by this court. The danger to liberty inherent in such a doctrine

* One of the most outstanding developments of this character is that of the Metropolitan Life Insurance Company, known as "Parkchester", Bronx County, in the City of New York. This large city within a city houses over forty thousand persons. It has its own police force, etc. See *The Architectural Forum*, December 1939. Similar large developments are planned in many places throughout the United States. See *American Builder*, June 1945, p. 94 ("Grandyle Village", near Buffalo, N. Y.); *Architectural Forum*, May 1945, p. 28, and *Business Week*, April 21, 1945, p. 106 ("Maplewood" near Lake Charles, Louisiana); *American Builder*, March 1945, pp. 84-85 ("San Lorenzo Village"); *The American City*, August 1945, p. 83. Consider the community located at Oak Ridge, Tennessee, whose inhabitants were engaged in manufacturing a vital part of the atomic bomb; *Architectural Record*, September 1945, p. 10; also, "Concord Village" housing project for Brooklyn, N. Y., sponsored by a group of banks, The New York *Times*, July 25, 1945.

becomes more apparent when it is considered that there is a growing tendency for such large private concerns to own, operate and control towns and communities. If ownership of property is the criterion by which the right to censor and prohibit the exercise of freedom of speech, press and worship of ALMIGHTY GOD is allowed, then there is a probability that large portions of a state or city could be bought up by a private concern and thus the Bill of Rights defeated within those areas.

Portions of the United States cannot be withdrawn from the reach of the Constitution by reason of private acquisition of communities. It is submitted that the constitutional liberties of the citizens do not depend for their subsistence upon any such tenuous basis.

In order to make the Constitution more than a shadow, and that it might be a living support to which the people can cling, this doctrine should be nipped in the bud.

Conclusion

Wherefore appellants pray that the judgment of each of the respective courts below be reversed and the appellants ordered discharged pursuant to the judgment to be entered herein.

Respectfully submitted,

A. R. TUCKER,
GRACE MARSH,
Appellants

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SUPREME COURT OF THE UNITED STATES.

No. 87.—October Term, 1945.

A. R. Tucker, Appellant. vs. The State of Texas. } On Appeal from the County Court of Medina County, Texas.

[January 7, 1946.]

Mr. Justice Black delivered the opinion of the Court.

The appellant was charged in the Justice Court of Medina County, Texas, with violating Article 479, Chap. 3 of the Texas Penal Code which makes it an offense for any "peddler or hawker of goods or merchandise" wilfully to refuse to leave premises after having been notified to do so by the owner or possessor thereof. The appellant urged in his defense that he was not a peddler or hawker of merchandise, but a minister of the gospel engaged in the distribution of religious literature to willing recipients. He contended that to construe the Texas statute as applicable to his activities would, to that extent, bring it into conflict with the Constitutional guarantees of freedom of press and religion. His contention was rejected and he was convicted. On appeal to the Medina County Court, his Constitutional contention was again overruled. Since he could not appeal to a higher state court this appeal under Sec. 237(a) of the Judicial Code, 28 U. S. C. 344(a) is properly before us. *Largent* v. *Texas*, 318 U. S. 418.

The facts shown by the record need be but briefly stated. Appellant is an ordained minister of the group known as Jehovah's Witnesses. In accordance with the practices of this group he calls on people from door to door, presents his religious views to those willing to listen, and distributes religious literature to those willing to receive it. In the course of his work, he went to the Hondo Navigation Village located in Medina County, Texas. The village is owned by the United States under a Congressional program which was designed to provide housing for persons engaged in National Defense activities. 42 U. S. C., §§ 1521-1553. According to all indications the village was freely accessible and open to the public and had the characteristics of a typical American

town. The Federal Public Housing Authority had placed the buildings in charge of a manager whose duty it was to rent the houses, collect the rents, and generally to supervise operations, subject to over-all control by the Authority. He ordered appellant to discontinue all religious activities in the village. Appellant refused. Later the manager ordered appellant to leave the village. Insisting that the manager had no right to suppress religious activities, appellant declined to leave, and his arrest followed. At the trial the manager testified that the controlling Federal agency had given him full authority to regulate the conduct of those living in the village, and that he did not allow preaching by ministers of any denomination without a permit issued by him in his discretion. He thought this broad authority was entrusted to him, at least in part, by a regulation, which the Authority's Washington office had allegedly promulgated. He testified that this regulation provided that no peddlers or hawkers could come into or remain in the village without getting permission from the manager.[1] Since the Texas Court has deemed this evidence of authority of the manager to suppress appellant's activities sufficient to support a conviction under the State statute, we accept their holding in this respect for the purposes of this appeal.

The foregoing statement of facts shows their close similarity to the facts which led us this day to decide in *Marsh* v. *Alabama*, No. 114, that managers of a company-owned town could not bar all distribution of religious literature within the town, or condition distribution upon a permit issued at the discretion of its management. The only difference between this case and *Marsh* v. *Alabama* is that here instead of a private corporation, the Federal Government owns and operates the village. This difference does not affect the result. Certainly neither Congress nor Federal agencies acting pursuant to Congressional authorization may abridge the freedom of press and religion safeguarded by the First Amendment. True, under certain circumstances it might be proper for security reasons to isolate the inhabitants of a settlement, such as Hondo Village, which houses workers engaged in producing war materials. But no such necessity and no such intention on the part of Congress or the Public Housing Authority are shown here.

[1] The available Regulations of the Authority, of which we can take judicial notice, Bowles v. United States, 319 U. S. 33, 35, do not show a regulation of this kind.

It follows from what we have said that to the extent that the Texas statute was held to authorize appellant's punishment for refusing to refrain from religious activities in Hondo Village it is an invalid abridgement of the freedom of press and religion.

We think it only proper to add that neither the Housing Act passed by Congress nor the Housing Authority Regulations contain language indicating a purpose to bar freedom of press and religion within villages such as the one here involved. The case is reversed and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed and remanded.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

Mr. Justice FRANKFURTER, concurring.

It will be time enough to consider the constitutionality of an Act of Congress that is claimed to be in defiance of the First Amendment when such legislation by Congress confronts us with the problem. The present case does not present such a situation. Subject to this reservation, I agree with the opinion of the Court for the reasons briefly stated in *Marsh* v. *Alabama*, decided this day. In the case of communities established under the sponsorship of the United States by virtue of its spending power, it would, I should think, be even less desirable than in the case of company towns to make the constitutional freedoms of religion and speech turn on gossamer distinctions about the extent to which land has been "dedicated" to public uses.

The CHIEF JUSTICE, Mr. Justice REED and Mr. Justice BURTON, dissenting.

The CHIEF JUSTICE, Mr. Justice REED and Mr. Justice BURTON construe the record in this case as showing a conviction for refusing, at the request of its authorized agent, to leave premises which are owned by the United States and which have not been shown to be dedicated to general use by the public. We, therefore, would affirm the conviction for the reasons given in the dissent in Number 114, *Marsh* v. *Alabama*, decided this day.